STATE OF CALIFORNIA

MEMO

To : **ADMINISTRATION COMMITTEE**
RAHIM HASSANALLY, CHAIR
RYAN BROOKS, MEMBER

Date: January 4, 2016

From : **WILLIAM G. BRENNAN**
ROBIN P. PARKER

Subject: **CONSIDERATION OF THE REVISED *GUIDE TO THE NEW MOTOR VEHICLE BOARD* TO INCLUDE INFORMATION ON STATUTORY AND REGULATORY CHANGES**

The enclosed *Guide to the New Motor Vehicle Board* was reviewed and revised most recently at the February 11, 2015, General Meeting. It is being updated to reflect legislative and regulatory changes that are effective January 1, 2016. The table of contents and all page references were updated. Additionally, the Preface was updated to delete the reference to the Office of Administrative Law's website. The pertinent changes, as indicated below, are in italic/underline and strikeout font.

- The section "New as of 2016" has been updated to reflect recent legislation impacting the Board, and regulations promulgated by the Board.

  - Assembly Bill 759 (Stats. 2015, Ch. 407), co-sponsored by the Recreation Vehicle Industry Association and California Recreational Vehicle Dealers Association, cleans up a number of inconsistencies in the Vehicle Code; deletes all references to Article 5 recreational vehicle protests in Sections 3066 and 3067; and adds parallel provisions to Article 5 (Sections 3080 and 3081).

  - Assembly Bill 1178, (Stats. 2015, Ch. 526) was sponsored by the California New Car Dealers Association. It establishes an export or sale-for-resale prohibition policy protest in Article 6 of the Vehicle Code. An association, which is defined as an organization primarily owned by, or comprised of, new motor vehicle dealers and that primarily represents the interests of dealers, may bring a protest challenging the legality of an export or sale-for-resale prohibition policy of a manufacturer, manufacturer branch, distributor, or distributor branch at any time on behalf of two or more dealers subject to the challenged policy pursuant to subdivision (y) of Section 11713.3.

  - The case management regulations promulgated by the Board add definitions of "proposed stipulated decision and order" and "stipulated decision and order of the board". Vehicle Code section 3050.7 provides that a Proposed Stipulated Decision and Order will be deemed adopted by the Board unless a member objects to it within 10 days after receipt thereof. In the event a member objects,

the procedure for getting this matter before the Board at a noticed meeting has been formalized. The regulation pertaining to subpoenas has been amended to clarify that a Board Administrative Law Judge can issue subpoenas. Additionally, all written requests for the issuance of a Board subpoena need to be "properly served on the opposing party or parties." The requirement that the original proof of service be filed with the Board following service upon the witness or deponent has been eliminated; a copy is sufficient.

  - The sanctions regulation was amended to clarify that a party requesting sanctions against another party may be awarded its expenses and attorney's fees in seeking sanctions, and, conversely, that a party from whom sanctions are sought who successfully defends against such a motion may be awarded its expenses and attorney's fees in opposing the motion for sanctions.

- There were changes throughout the *Guide* to reflect the new provisions added by Assembly Bill 759.[1]

There were no other substantive changes.

This topic is being agendized for discussion and consideration at the February 10, 2016 General Meeting. If you have any questions or require additional information, please contact me at (916) 324-6197 or Robin at (916) 323-1536.

Enclosure

cc: Glenn Stevens

[1] An *Export or Sale-For-Resale Prohibition Policy Protest Guide* for Vehicle Code section 3085 protests filed by an association, as defined, is being considered at the February 10, 2016, Meeting.

State of California
NEW MOTOR VEHICLE BOARD

GUIDE
TO THE
NEW MOTOR VEHICLE BOARD

February 2016

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

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PREAMBLE

This publication provides general information only as to the most pertinent Vehicle Code sections as they relate to practice before the New Motor Vehicle Board ("Board"). There are many other important Vehicle Code sections and Department of Motor Vehicles ("Department") regulations not covered in this publication. The materials contained herein are intended to be informative and not advisory, limited in scope, and are not intended to be a substitute for careful reading of the specific statutes and regulations that may apply to your particular situation. Practitioners as well as the general public are invited to comment on the forms and contents of procedures. Please note the Board's address is different from the address of the Department. The Board only has one office in Sacramento. All correspondence, protests, petitions, and appeals should be sent to:

New Motor Vehicle Board
ATTN: Legal Department
1507 21st Street, Suite 330
Sacramento, California 95811

Correspondence can also be sent via e-mail at nmvb@nmvb.ca.gov or facsimile at (916)-323-1632. The telephone number of the Board is (916) 445-1888 and the website address is www.nmvb.ca.gov. Detailed information can be found on the Board's website. Please feel free to contact the Board's staff for further information.

PREFACE

The purpose of this publication is to familiarize the reader with the organization and jurisdiction of the Board, including the Board's operations and procedures. All statutory references are to pertinent sections of the Vehicle Code unless otherwise specified. The full text of pertinent sections of the Vehicle Code is available on the Board's website or at http://leginfo.legislature.ca.gov/faces/codes.xhtml. References to regulations are to Title 13 of the California Code of Regulations. The referenced sections will be noted in the following manner, for example, 13 CCR § 550, et seq. The regulations are also available on the Board's website or at the Office of Administrative Law's ("OAL") website (www.oal.ca.gov). Once you reach the OAL site, under "Sponsored Links", select California Code of Regulations. You will be taken to the California Code of Regulations and can search by title; the Board's regulations are in Title 13. As the Board is a quasi-judicial agency that holds administrative hearings, statutes comprising the administrative adjudication provisions of the Administrative Procedure Act ("APA"; Gov. Code § 11400 through 11529) are applicable. The provisions of the APA are available at http://leginfo.legislature.ca.gov/faces/codes.xhtml ~~or at the Office of Administrative Hearings website (http://www.dgs.ca.gov/oah/Home.aspx)~~. Citations to relevant court decisions are interspersed throughout.

The Board also publishes the *Informational Guide for Manufacturers and Distributors* to assist manufacturers and distributors in clarifying California's vehicle franchise laws. It is designed for personnel in manufacturer or distributor market representation departments, dealer development departments, or legal departments. The *Informational Guide for Manufacturers and Distributors* is available free from the Board's offices at the above address, or can be accessed and downloaded from the Board's website at www.nmvb.ca.gov.

INTRODUCTION

PURPOSE

The Board is a program within the Department. The Board was originally created in 1967 as the New Car Dealers Policy and Appeals Board. At that time, the Board's only function was hearing appeals from final decisions of the Director of the Department adverse to the occupational license of a new motor vehicle dealer, manufacturer, distributor, or representative.[1] In 1973, the Legislature passed the California Automobile Franchise Act (Stats. 1973, ch. 966, § 1, p. 2), which gave the Board its present name and created a broad statutory framework and a forum for regulating and settling disputes in the new vehicle industry. The constitutionality of this regulatory scheme has survived a due process challenge in the United States Supreme Court (*New Motor Vehicle Board* v. *Orrin W. Fox Co.* (1978) 439 U.S. 96, 58 L.Ed.2d 361, 99 S.Ct. 403).

ORGANIZATION

The organization of the Board is prescribed in Vehicle Code sections 3000 to 3016. The Board is comprised of nine members. The chart below identifies the composition of the Board.

Who	Qualifications	Appointment
Four licensed new motor vehicle dealers. (Dealers that deal exclusively in motorcycles, ATVs, or recreational vehicles are excluded from membership on the Board.)	Must have been licensed as a new motor vehicle dealer for not less than five years.	All by the Governor.
Five members from the general public.	One must be an attorney who has been a member of the California Bar for at least 10 years.	Three by the Governor. One by the Senate Rules Committee. One by the Speaker of the Assembly.

[1] Throughout this Guide, the terms dealer, protestant, and franchisee are used interchangeably, as are the terms manufacturer/distributor, respondent, and franchisor.

MEETINGS

The Board meets at least twice during each calendar year, with supplemental meetings held as necessary. Board meetings are open to the public with the exception of executive sessions, which are held to deliberate on pending matters before the Board. As public meetings conducted by a state entity, the Bagley-Keene Open Meeting Act (Gov. Code §§ 11120 through 11132) covers all requirements for public notice, agendas, public testimony and the conduct of Board meetings. To the extent practicable, the Board conducts business at meetings using a modern interpretation of procedures set forth in *Robert's Rules of Order*.

JURISDICTION

The Board's statutory jurisdiction under Vehicle Code section 3050(c) extends over any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative. In the past, the courts construed this jurisdiction as primary and exclusive, meaning an aggrieved licensee must bring any dispute arising out of the franchise relationship before the Board prior to seeking judicial relief (*Yamaha Motor Company* v. *Superior Court* (1986) 185 Cal.App.3d 1232 [230 Cal.Rptr. 382]; *Yamaha Motor Company* v. *Superior Court* (1987) 195 Cal. App. 3d 652 [240 Cal.Rptr. 806]; *Ray Fladeboe Lincoln-Mercury, Inc. v. New Motor Vehicle Board* (1992) 10 Cal.App.4th 51 [12 Cal.Rptr.2d 598]; *Mathew Zaheri Corp.* v. *Mitsubishi Motor Sales of America, Inc.* (1993) 17 Cal.App.4th 288 [21 Cal.Rptr.2d 325].) However, subsequent court decisions have held otherwise (*Miller* v. *Superior Court* (1996) 50 Cal. App.4th 1665 [58 Cal.Rptr.2d 584]; *Hardin Oldsmobile* v. *New Motor Vehicle Board* (1997) 52 Cal.App.4th 585 [60 Cal.Rptr.2d 583]; *Tovas* v. *American Honda Motor Company, Inc.* (1997) 57 Cal.App.4th 506 [67 Cal.Rptr.2d 145]; *Kemp* v. *Nissan Motor Corporation in U.S.A.* (1997) 57 Cal.App.4th 1527 [67 Cal.Rptr.2d 794].) As a consequence of these judicial decisions, subdivision (e) of Vehicle Code section 3050 was added by the Legislature in 1997 and became effective in 1998. It provides that the courts have jurisdiction over all common law and statutory claims originally cognizable in the courts. For those claims, a party may initiate an action directly in any court of competent jurisdiction.

In 2003, the Board's petition jurisdiction under Vehicle Code section 3050(c) was further narrowed by the Third District Court of Appeal in *Mazda Motor of America, Inc.* v. *California New Motor Vehicle Board; David J. Phillips Buick-Pontiac, Inc., Real Party in Interest* (2003) 110 Cal.App.4th 1451 [2 Cal.Rptr.3d 866]. The court held that the Board's jurisdiction for licensee versus licensee petitions is limited to those in which the petitioner seeks relief under Vehicle Code section 3050, subdivision (c)(1) or (3). Subdivision (c)(1) allows the Board to direct the Department to conduct an investigation of matters that the Board deems reasonable. Subdivision (c)(3) permits the Board to order the Department to "exercise any and all authority or power that the department may have with respect to the issuance, renewal, refusal to renew, suspension, or revocation" of the occupational license of a manufacturer or distributor. The Board's jurisdiction under Vehicle Code section 3050, subdivision (c)(2), which provides that the Board may "undertake to mediate, arbitrate, or

otherwise resolve any honest difference of opinion or viewpoint [i.e., hold a hearing] existing between any member of the public and any new motor vehicle dealer, manufacturer, … distributor …", is now limited to petitions brought by members of the public, and does not include licensees as petitioners.

Effective January 1, 2004, the Vehicle Code was amended to bring new recreational vehicles ("RVs") as defined in Health and Safety Code section 18010(a) under the jurisdiction of the Board for purposes of dispute resolution and fee collection (SB 248, Stats. 2003, ch. 703 § 11). This Guide integrates current Board processes and procedures to the extent they can be used to resolve disputes in the RV segment of the new motor vehicle industry, and sets forth unique procedures that pertain to RV issues exclusively.

NEW AS OF 2016

LEGISLATION

Assembly Bill 988 *(Stats. 2014, Ch. 279)* effective January 1, 2015, amends the definition of all-terrain vehicle (Veh. Code § 111) to include recreational off-highway vehicles (ROHVs) as defined in Section 500 and utility terrain vehicles (UTVs) as defined in Section 531. Dealers, manufacturers and distributors of these vehicles are subject to the Department's licensing requirements and fall within the jurisdiction of the Board. Sections 3001 and 3003 as amended exclude ATV dealers from serving as members of the Board.

Assembly Bill 759 (Stats. 2015, Ch. 407), co-sponsored by the Recreation Vehicle Industry Association and California Recreational Vehicle Dealers Association, is effective January 1, 2016. It cleans up a number of inconsistencies in the Vehicle Code; deletes all references to Article 5 recreational vehicle protests in Sections 3066 and 3067; and adds parallel provisions to Article 5 (Sections 3080 and 3081).

Assembly Bill 1178, (Stats. 2015, Ch. 526) effective January 1, 2016, was sponsored by the California New Car Dealers Association. It establishes an export or sale-for-resale prohibition protest in Article 6 of the Vehicle Code. An association, which is defined as an organization primarily owned by, or comprised of, new motor vehicle dealers and that primarily represents the interests of dealers, may bring a protest challenging the legality of an export or sale-for-resale prohibition policy of a manufacturer, manufacturer branch, distributor, or distributor branch at any time on behalf of two or more dealers subject to the challenged policy pursuant to subdivision (y) of Section 11713.3. The relief sought in this protest is limited to a declaration that an export or sale-for-resale prohibition policy of a manufacturer, manufacturer branch, distributor, or distributor branch violates the prohibitions of subdivision (y) of Section 11713.3. No monetary relief may be sought on behalf of the association or any dealers represented by the association. The association has the burden of proof to show that the challenged export or sale-for-resale prohibition policy violates subdivision (y) of Section 11713.3. The Board's authority to hear protests submitted by an association sunsets on January 1, 2019.

CASE LAW

There were no new decisions impacting the Board's jurisdiction that were final in 2015.

REGULATIONS

The Board recently promulgated several regulatory amendments pertaining to case management and sanctions that are operative January 1, 2016. The Board's regulations, Sections 550 through 598, are under Title 13 (Motor Vehicles), Division 1 (Department of Motor Vehicles), Chapter 2 (New Motor Vehicle Board) of the California Code of Regulations ("CCR"). There are separate and different regulation provisions for appeals (Articles 3 and 4), petitions (Articles 2 and 4), and protests (Article 5).

The following summarizes, in part, these regulatory changes:

13 CCR § 550 *- definitions of "proposed stipulated decision and order" and "stipulated decision and order of the board" were added. These definitions are supplemental to and do not replace those found in the Vehicle Code or other applicable statutes and regulations.*

13 CCR § 551.2 *- clarifies that a Board Administrative Law Judge can issue subpoenas. Additionally, all written requests for the issuance of a Board subpoena need to be "properly served on the opposing party or parties." Unlike the civil courts which allow parties to issue their own subpoenas, the Board controls discovery and issues all subpoenas. It is important that parties appearing before the Board are notified of any subpoena requests prior to the Board's issuance of the subpoena so there is an opportunity to file a motion to quash. The requirement that the original proof of service be filed with the Board following service upon the witness or deponent has been eliminated; a copy is sufficient. Litigants have the option of filing an original or copy.*

13 CCR § 551.21 *- clarifies that a party requesting sanctions against another party may be awarded its expenses and attorney's fees in seeking sanctions, and, conversely, that a party from whom sanctions are sought who successfully defends against such a motion may be awarded its expenses and attorney's fees in opposing the motion for sanctions.*

13 CCR § 551.22 *- Vehicle Code section 3050.7 provides that a Proposed Stipulated Decision and Order will be deemed adopted by the Board unless a member of the Board objects to it within 10 days after receipt thereof. In the event a member objects to the Proposed Stipulated Decision and Order, the procedure for getting this matter before the Board at a noticed meeting has been formalized.*

POWERS AND DUTIES IN GENERAL

The powers and duties of the Board are set out in Vehicle Code sections 3050 and 3051. New motor vehicle dealers, manufacturers, and distributors under the jurisdiction of the Board are charged fees to fund the Board's activities (Veh. Code § 3016; 13 CCR § 553.) In addition to delegating rulemaking authority to the Board, Vehicle Code section 3050 empowers the Board to resolve disputes arising in the form of protests, petitions, or appeals.

As a quasi-judicial body, the Board has authority under Vehicle Code section 3050.1(a) to:

- Administer oaths;
- Take depositions;
- Certify to official acts; and,
- Issue subpoenas to compel attendance of witnesses and the production of documents.

ENFORCEMENT OF BOARD ORDERS

There are provisions for sanctions and penalties for violating orders of the Board or the requirements of those sections of the Vehicle Code within the Board's authority. Obedience to subpoenas and the compliance with discovery procedures can be enforced by application to the Superior Courts (Veh. Code § 3050.2(a).) Vehicle Code section 3050.2(b) gives the Executive Director authority, at the direction of the Board, upon a showing of failure to comply with authorized discovery without substantial justification, to dismiss a protest or petition or suspend the proceedings pending compliance (see discussion of *Nader* on page 7). Vehicle Code section 11726 provides for enforcement of Board orders by permitting any licensee to recover damages, attorney fees, and injunctive relief in any court of competent jurisdiction for a willful failure to comply with a Board order.

MANDATORY SETTLEMENT CONFERENCES

In any protest or petition filed with the Board, the Board, its Executive Director, or an Administrative Law Judge ("ALJ") may order a mandatory settlement conference (Veh. Code § 3050.4). For any particular proceeding, the settlement conference judge is precluded from hearing the proceeding on the merits or other motions in the case without stipulation by the parties (13 CCR § 551.11). The failure of a party to appear, to be prepared, or to have the authority to settle the matter at such a conference may result in the Board taking action adverse to that party (Veh. Code § 3050.4).

DISPUTES BETWEEN THE DEALER AND THE FRANCHISOR

The Vehicle Code gives the Board jurisdiction to resolve disputes involving the following:

Type of Case	Vehicle Code Authority	Page Nos.
Attempts by the franchisor to terminate, modify, or refuse to continue (renew) the franchise.	3060, 3070	12-20
Attempts by the franchisor to establish a new, or relocate an existing, dealer (of the "same line-make") if the current franchisee is within a radius of 10 air miles of the proposed location (called the "relevant market area").	3062(a)(1), 3072(a)(1)	21-25
Attempts by the franchisor to establish a satellite warranty facility at, or relocate an existing satellite warranty facility to, a location that is within 2 miles of any dealership of the same line-make. (Note: there are no comparable provisions for RV dealers.)	3062(a)(2)	26-29
Disputes relating to the dealers' delivery and preparation obligations, and compensation for such services.	3064, 3074	30-31
Disputes relating to reimbursement for warranty work performed by motor vehicle dealers.	3065	32-38
Disputes relating to reimbursement for warranty work performed by RV dealers.	3075	39-41
Disputes relating to reimbursement for franchisor incentive programs by motor vehicle dealers.	3065.1	42-47
Disputes relating to reimbursement for franchisor incentive programs by RV dealers.	3076	48-49
All other disputes concerning the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, or distributor submitted by any member of the public[2] or disputes between a franchisor and a franchisee seeking an investigation or a licensing action by the Department.	3050(c)	56-61

NOTE: Vehicle Code section 3050(d) prohibits a dealer member from participating, hearing, commenting, advising other members upon, or deciding any matter that involves a

[2] Members of the public have the option to seek informal mediation of their disputes (13 CCR § 551.14 et seq.) as well as administrative hearings on the merits pursuant to the Board's petition process.

protest filed "pursuant to Article 4 (commencing with Section 3060), unless all parties to the protest stipulate otherwise." Vehicle Code section 3066(d) states: "[a] member of the board who is a new motor vehicle dealer may not participate in, hear, comment, or advise other members upon, or decide, a matter involving a protest filed pursuant to this article [Article 4, i.e., protests involving motor vehicles other than RVs] unless all parties to the protest stipulate otherwise." These constraints ensure procedures that preclude any suggestion of bias or partiality of Board decisions. The dealer members may participate in those matters not involving a dispute between a franchisee and franchisor such as a petition filed by a member of the public or an appeal from a Department decision. For matters before the Board in which relief is sought pursuant to Vehicle Code section 3050(c), dealer members may not participate and there are no provisions to allow parties to stipulate and permit participation.

In Article 4 protests (involving cars, motorcycles, and ATVs), dealer members may participate if both parties so stipulate. Dealer members participate in Article 5 recreational vehicle protests unless the dealer Board member also owns and/or has a financial interest in a recreational vehicle dealership. Both parties can stipulate to allow the dealer member to participate in this instance.

PROTESTS IN GENERAL

STATUTORY AUTHORITY

Vehicle Code section 3050(d) provides for the Board to hear and decide any protest presented by a franchisee against a franchisor.

STATUTORY BASES FOR PROTEST

A protest can arise as a result of disputes contemplated by the following statutory provisions:

Vehicle Code Section	Provision
3060, 3070	The franchisor attempts to terminate, modify, or refuses to continue the franchise.
3062(a)(1), 3072(a)(1)	The franchisor attempts to establish an additional dealer or relocate an existing dealer within the relevant market area (any area within a radius of 10 miles from the site of a potential new dealership) where the same line-make is already represented.
3062(a)(2)	The franchisor attempts to establish an additional satellite warranty facility or relocate an existing satellite warranty facility within 2 miles of any dealership of the same line-make. (Note: there are no comparable provisions for RV dealers.)
3064, 3074	Disputes relating to the dealer's delivery and preparation obligations, and compensation for such services.
3065, 3075	Disputes relating to reimbursement for warranty work performed by the dealer.
3065.1, 3076	Disputes relating to reimbursement for franchisor incentive programs.

SEPARATE PROTESTS

A separate protest is required if there is more than one franchise.[3] For example, if a franchised dealer files a single protest to the attempted termination of its Chrysler, Jeep and Dodge franchises, consistent with Vehicle Code section 3050 and 13 CCR § 583, the Board would require the dealer to file an amended protest for one of its franchises, i.e., Chrysler, and new protests for the other two franchises, i.e., Jeep and Dodge.

FILING PROTEST

Most protests have specific statutorily imposed time limits for filing. A protest is deemed filed upon its receipt by the Board via regular mail, e-mail or facsimile, or upon mailing of the protest, if it is sent by either certified or registered mail. Accordingly, it is suggested that all protests be either personally filed or mailed by certified or registered mail.

FRANCHISOR'S NOTICE OF APPEARANCE

The respondent shall file a written notice of appearance within 15 days of receipt of the protest (13 CCR § 585.1). Failure to timely file a notice of appearance shall result in the proceedings being suspended until such time as a notice of appearance is filed.

FILING FEE

A filing fee of $200, which should be in the form of a check, money order or an authorized credit card charge payable to the New Motor Vehicle Board, must accompany the protest and notice of appearance. In the event of a financial hardship, either the protestant or respondent may submit a request for a fee waiver, requesting that the Executive Director, upon a showing of good cause, waive the $200 filing fee (13 CCR § 553.40). (Samples are

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[3] Vehicle Code section 331 defines a "franchise" in part as follows: "…a written agreement between two or more persons having all of the following conditions:

(1) A commercial relationship of definite duration or continuing indefinite duration.

(2) The franchisee is granted the right to offer for sale or lease, or to sell or lease at retail new motor vehicles or new trailers subject to identification pursuant to Section 5014.1 manufactured or distributed by the franchisor or the right to perform authorized warranty repairs and service, or the right to perform any combination of these activities.

(3) The franchisee constitutes a component of the franchisor's distribution system.

(4) The operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, advertising, or other commercial symbol designating the franchisor.

(5) The operation of a portion of the franchisee's business is substantially reliant on the franchisor for a continued supply of new vehicles, parts, or accessories.

A recreational vehicle franchise is defined in Vehicle Code section 331.3 as a written agreement between two or more persons having both of the following conditions: (a) A commercial relationship of definite duration or continuing indefinite duration; and (b) The franchisee is granted the right to offer for sale or lease, or to sell or lease at retail, new recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and Safety Code, that are manufactured or distributed by the franchisor, or the right to perform authorized warranty repairs and service, or the right to perform any combination of these activities.

available on the Board's website.)

INTERESTED INDIVIDUALS

Per Vehicle Code sections 3066 *and 3080*, any interested individual may apply to the Board for permission to appear at the hearing on any protest for the purpose of submitting direct evidence concerning the issues raised in the protest.

MOTION FOR INTERVENTION

Any person, including a Board member, concerned with the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch or representative may file a motion to intervene in a pending proceeding subject to the conditions set forth in 13 CCR § 551.13.

CHALLENGE TO PRESIDING OFFICER

A party may request disqualification of a Board member or an ALJ for cause prior to the taking of evidence by filing an affidavit stating the grounds for the request (13 CCR § 551.1). Further, 13 CCR § 551.12(b) entitles a party in a Board proceeding to one disqualification without cause (peremptory challenge) of an assigned ALJ by filing the peremptory challenge with the Board no later than either 20 days from the date of the order of time and place of hearing identifying the ALJ or 20 days prior to the date scheduled for commencement of the hearing, whichever is earlier (13 CCR § 551.12(b)(1)). Parties are not entitled to a peremptory challenge in any proceeding relating to applications for temporary relief or interim orders. Except for the convenience of the Board or for good cause shown, no hearing shall be continued by the filing of a peremptory challenge.

AMICUS CURIAE BRIEFS

The Board, its Executive Director, or an ALJ may, in his or her discretion, allow the filing of amicus curiae briefs (13 CCR § 551.13).

TABLE OF CONTENTS FOR PROTEST SECTION

The chart below identifies the section and page numbers for procedural requirements particular to each type of protest, but should be relied on only as a guide.

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TERMINATION OF FRANCHISE

STATUTORY AUTHORITY FOR PROTEST

Vehicle Code sections 3060 and 3070 give the dealer the right to protest an attempt by the manufacturer or distributor to terminate or refuse to continue an existing franchise agreement.

FRANCHISOR'S NOTICE OF TERMINATION

Vehicle Code sections 3060 and 3070 provide that no franchisor (manufacturer or distributor) shall terminate or refuse to continue a franchise (sales and service agreement) unless written notice of the franchisor's intent to terminate has been received by both the franchisee (dealer) and the Board. The notice must set forth the specific grounds for termination and must contain, on the first page thereof in at least 12-point bold type and circumscribed by a line, one of the following statements:

(When a 60-day notice of termination ***or refusal to continue*** is given.)

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days after receiving this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived.

(When a 15-day notice of termination is given.)

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 10 calendar days after receiving this notice or within 10 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived.

Termination notices are required to be separately issued to each franchisee and separately issued for each line-make represented by a franchisee. This is consistent with the Vehicle Code and 13 CCR § 593.1. Notices should not be combined to include more than one franchisee nor combined to include more than one line-make. For example, if American Honda seeks to terminate a motorcycle/ATV/scooter dealership and has a separate franchise for each line-make, then there should be three separate termination notices sent to the franchisee and the Board.

TIME FOR FILING A PROTEST

It is essential not to confuse the time within which to file a protest with the Board with the time at which a termination becomes effective. The time at which the termination will become effective is governed by the reasons for termination. The chart below identifies the reasons for termination, corresponding protest filing periods, and effective dates of termination.

Reason for Termination	Filing Period	Effective Date of Termination
Transfer of any ownership or interest in the franchise without the consent of the franchisor. The consent shall not be unreasonably withheld.	10 days from dealer's receipt of notice or 10 days after the end of any appeal procedure provided by the franchisor.	15 days after dealer's receipt of notice.
Misrepresentation by the franchisee in applying for the franchise.	As above.	As above.
Insolvency of the franchisee, or the filing of any petition by or against the franchisee under any bankruptcy or receivership law.	As above.	As above.
Any unfair business practice after written warning thereof.	As above.	As above.
Failure of the motor vehicle dealer to conduct its customary sales and service operations during its customary hours of business for seven consecutive business days, giving rise to a good faith belief on the part of the franchisor that the motor vehicle (recreational vehicle) dealer is in fact going out of business, except for circumstances beyond the direct control of the motor vehicle (recreational vehicle) dealer or by order of the Department.	As above.	As above.
Any other reason.	30 days from dealer's receipt of notice or 30 days after the end of any appeal procedure provided by the franchisor.	60 days after dealer's receipt of notice.

The protest shall be considered filed on the date of receipt via regular mail, e-mail or facsimile by the Executive Director of the Board or on the date of certified or registered mailing. A document which purports to be a protest will not be "filed" until the Executive

Director has reviewed it for compliance with the Board's enabling statutes and regulations. If the Executive Director deems the document complies, it shall be filed as a protest (13 CCR § 598).

Failure of a dealer to file a timely protest with the Board will result in a loss of the right to a hearing before the Board. This could result in automatic termination of the franchise as of the time indicated in the notice of termination. Filing a timely protest will prevent the termination from becoming effective until the protest is resolved by the Board.

REQUIRED ELEMENTS OF A PROTEST

The required content of a protest under Vehicle Code sections 3060 and 3070 is described in 13 CCR § 585. A protest to the proposed termination or non-renewal of a franchise must contain all of the following (see Appendix for sample Form A):

Content Requirements	Regulatory Authority
Must be in writing and be signed by a franchisee or its attorney.[4]	13 CCR § 583
Must be responsive to the specific grounds of the termination set forth in the notice and set forth clearly and concisely the factual contentions of the franchisee with respect to the matter referred to in the notice.	13 CCR § 585(b)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 585(d)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 585(e)
Franchisee shall set forth an estimate of the number of days required to complete the hearing.	13 CCR § 585(f)
Franchisee shall set forth a request for a pre-hearing conference if one is desired.	13 CCR § 585(g)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 585(c)
Franchisee shall simultaneously deliver a $200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

[4] If the franchisee is a natural person, not a corporation or other legal entity, the protest shall be signed by that person or by the franchisee's attorney or representative. If the franchisee is a corporation or other legal entity, the protest shall be signed by an attorney representing the entity, or by an authorized representative of the entity (13 CCR § 583).

GOOD CAUSE

If a timely protest is filed, the manufacturer or distributor cannot terminate the franchise until a hearing has been held and the Board acts on the proposed decision. At a hearing, the manufacturer or distributor will have the burden of proving "good cause" for termination. In making a determination of good cause under Vehicle Code sections 3061 or 3071, the Board shall take into consideration the existing circumstances, including, but not limited to all of the following:

Circumstances	Vehicle Code Section
Amount of business transacted by the franchisee, as compared to the business available to the franchisee.	3061(a), 3071(a)
Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.	3061(b), 3071(b)
Permanency of the investment.	3061(c), 3071(c)
Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted.	3061(d), 3071(d)
Whether the franchisee has adequate motor vehicle or recreational vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles or recreational vehicles handled by the franchisee and has been and is rendering adequate services to the public. (Note: In the case of RVs, not all franchise agreements require service facilities, equipment, vehicle parts, and qualified service personnel.)	3061(e), 3071(e)
Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee. (Note: In the case of RVs, not all franchise agreements require franchisees to have warranty obligations.)	3061(f), 3071(f)
Extent of the franchisee's failure to comply with the terms of the franchise.	3061(g), 3071(g)

DETERMINATION OF PROTEST

If the franchisor, having the burden, cannot establish good cause for terminating the franchise, the protest will be sustained and the termination will not be permitted.

MODIFICATION OF FRANCHISE

STATUTORY AUTHORITY FOR PROTEST

Vehicle Code sections 3060(b) and 3070(b) give the dealer the right to protest an attempt by the manufacturer or distributor to modify or replace an existing franchise such that the modification substantially affects the dealer's sales or service obligations or investment.

FRANCHISOR'S NOTICE OF MODIFICATION

Vehicle Code sections 3060 and 3070 provide that no franchisor shall modify or replace an existing franchise with a succeeding franchise if the modification or replacement would substantially affect the existing franchisee's sales or service obligations or investment, unless written notice of modification or replacement is given to each affected franchisee and the Board at least 60 days prior to the modification or replacement.[5]

The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line, the following statement:

NOTICE TO DEALER: **Your franchise agreement is being modified or replaced. If the modification or replacement will substantially affect your sales or service obligations or investment, you have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the proposed modification or replacement of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days of your receipt of this notice or within 30 days after the end of any appeal procedure provided by the franchisor[6] or your protest rights will be waived.**

Modification notices are required to be separately issued to each franchisee and separately issued for each line-make represented by a franchisee. This is consistent with the Vehicle Code and 13 CCR § 593.1. Notices should not be combined to include more than one franchisee nor combined to include more than one line-make.

TIME FOR FILING A PROTEST

Filing a timely protest will prevent the modification from becoming effective until the protest is resolved by the Board. It is essential not to confuse the time within which to file a protest

[5] Despite the franchisor's decision that the notices to the franchisee and the Board are not required, to avoid a claim that it has violated any of the Vehicle Code provisions, a franchisor may decide to issue notices that comply with the statutes. The franchisor also may at the same time expressly state, along with the notices or in the notices themselves, that the franchisor believes that the notices were not required and also claim that there is no right in the franchisee to file a protest despite the notices stating to the contrary (as required by the statutory language).

[6] ~~Vehicle Code section 3070(b)(2) refers to "franchiser" instead of "franchisor". The statutorily required notice sent to impacted recreational vehicle dealers should contain "franchiser" until clean-up legislation is enacted.~~

with the Board with the time at which a modification becomes effective. The chart below identifies the protest filing period and effective date of modification:

Reason for Modification	Filing Period	Effective Date of Modification
As stated by franchisor.	30 days from dealer's receipt of notice or 30 days after the end of any appeal procedure provided by the franchisor.	60 days after dealer's receipt of notice

The protest shall be considered filed on the date of receipt via regular mail, e-mail or facsimile by the Executive Director of the Board or on the date of certified or registered mailing. A document which purports to be a protest will not be "filed" until the Executive Director has reviewed it for compliance with the Board's enabling statutes and regulations. If the Executive Director deems the document complies, it shall be filed as a protest (13 CCR § 598).

Failure of a dealer to file a timely protest with the Board will result in a loss of the right to a hearing before the Board. This could result in the modification becoming effective as stated in the notice. Filing a timely protest will prevent the modification or replacement from becoming effective until the protest is resolved by the Board.

REQUIRED ELEMENTS OF PROTEST

The required content of a protest under Vehicle Code sections 3060 and 3070 is described in 13 CCR § 585. A protest of modification or replacement of an existing franchise must contain all of the following (see Appendix for sample Form A):

Content Requirements	Regulatory Authority
Must be in writing and be signed by a franchisee or its attorney.[7]	13 CCR § 583
Must be responsive to the specific grounds of the modification or replacement set forth in the notice and set forth clearly and concisely the factual contentions of the franchisee with respect to the matter referred to in the notice.	13 CCR § 585(b)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 585(d)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 585(e)
Franchisee shall set forth an estimate of the number of days required to complete the hearing.	13 CCR § 585(f)
Franchisee shall request a pre-hearing conference if one is desired.	13 CCR § 585(g)
Franchisee may submit, as exhibits, to the protest photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 585(c)
Franchisee shall simultaneously deliver a $200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

GOOD CAUSE

If a timely protest is filed, the manufacturer or distributor cannot modify the franchise if such modification would substantially affect a dealer's sales or service obligations or investment until a hearing has been held by the Board. At the hearing, the dealer has the

[7] See footnote 4.

initial burden to establish that there is a proposed modification, which would substantially affect the dealer's sales or service obligations or investment. If the dealer meets this burden, the burden of proof shifts to the manufacturer or distributor to prove "good cause" for the modification. In making a determination of good cause pursuant to Vehicle Code sections 3061 or 3071, the Board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

Circumstances	**Vehicle Code Section**
Amount of business transacted by the franchisee, as compared to the business available to the franchisee.	3061(a), 3071(a)
Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.	3061(b), 3071(b)
Permanency of the investment.	3061(c), 3071(c)
Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted.	3061(d), 3071(d)
Whether the franchisee has adequate motor vehicle or recreational vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles or recreational vehicles handled by the franchisee and has been and is rendering adequate services to the public. (Note: In the case of RVs, not all franchise agreements require service facilities, equipment, vehicle parts, and qualified service personnel.)	3061(e), 3071(e)
Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee. (Note: In the case of RVs, not all franchise agreements require franchisees to have warranty obligations.)	3061(f), 3071(f)
Extent of the franchisee's failure to comply with the terms of the franchise.	3061(g), 3071(g)

DETERMINATION OF PROTEST

The modification will not be permitted if the Board decides the manufacturer or distributor failed to establish good cause for the intended modification.

If a replacement franchise is the successor franchise to an expiring or expired term franchise, the prior franchise shall continue in effect until resolution of the protest by the Board. In the event of multiple protests, hearings shall be consolidated to expedite the disposition of the issue.

ADDITIONAL OR RELOCATED FRANCHISE

STATUTORY AUTHORITY FOR PROTEST

Vehicle Code sections 3062(a)(1) and 3072(a)(1) give a dealer the right to protest the establishment of an additional dealership or relocation of an existing dealership of the same line-make within a ten-mile radius of the proposed new or relocating dealership. Any protest filed pursuant to this section is, by statute, filed against the manufacturer or distributor that is attempting to establish or relocate one of its dealers.

NOTE: The proposed new dealer, or the existing dealer seeking to relocate, may appear in the proceedings as an interested individual. The rights of an interested individual to participate in the proceedings are somewhat limited, and subject to the ALJ's management of the hearing. In general, interested individuals have no right to formal discovery or right of cross-examination at the hearing.

FRANCHISOR'S NOTICE OF ADDITIONAL OR RELOCATED FRANCHISE

Vehicle Code sections 3062(a)(1) and 3072(a)(1) require that the manufacturer or distributor must first give written notice to the Board and to dealerships of the "same line-make" within the "relevant market area" of the proposed new or relocating dealership.

The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line, the following statement:

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director[8], upon a showing of good cause, may grant you an additional 10 days to file the protest.

Establishment and relocation notices are required to be separately issued to each franchisee and separately issued for each line-make represented by a franchisee. This is consistent with the Vehicle Code and 13 CCR § 593.1. Notices should not be combined to include more than one franchisee nor combined to include more than one line-make. For example, if General Motors LLC seeks to establish an additional Buick/Cadillac/GMC dealership and has a separate franchise for each line-make, then there should be separate establishment notices sent to each franchisee of any of the three line-makes within the

[8] ~~Effective January 1, 2004, the position of Secretary was changed to Executive Director in the Vehicle Code and California Code of Regulations. However, Vehicle Code section 3072 still references "secretary." The statutorily required notice sent to RV dealers should continue to reference secretary until the statute is amended.~~

relevant market area of the proposed new location (as defined in Vehicle Code section 507) and the Board.

For motor vehicles other than RVs, “line-make” is not defined in the code. What is or is not a same “line-make” is obvious in most situations. However, gray areas can exist. In this Guide, the working definition of “line-make” for the automobile industry corresponds to that used by the Department as a classification system for registering vehicles, licensing dealers, and resolving questions related to OL-124 relevant market area requirements. For instance, in the automotive industry, a manufacturer such as General Motors would have several “makes” including Buick, Chevrolet, and Cadillac. Each “make”, in turn, would be comprised of several “lines” or models, e.g., Chevrolet has Silverado, Impala, and Tahoe “lines” or models.

For the RV industry, which lacks uniformity, "recreational vehicle line-make” is defined in Vehicle Code section 3072.5 as: “a group or groups of recreational vehicles defined by the terms of a written agreement that complies with Section 331.*3*.” ~~Effective January 1, 2009, the proper reference should be Section 331.3.~~ It is essential that RV franchisors are precise when defining a line-make in RV franchise agreements and ensure that their makes are registered with the Department.

Relevant market area is defined in Vehicle Code section 507 as “any area within a radius of 10 miles from the site of a potential new dealership.” The distance is determined by a straight-line measurement between the nearest points of the new dealership’s location and the protesting dealership’s location. There are times when a survey will be necessary to determine whether a dealer desiring to protest is within the relevant market area.

EXCEPTIONS TO THE RIGHT TO PROTEST

New Motor Vehicle Dealers (including RVs)

There are exceptions to the requirement of notice to existing dealers within the relevant market area of a franchisor’s intent to establish or relocate a dealership. These exceptions are located in Vehicle Code sections 3062 and 3072, and provide that no notice is required to be given, and there is no right to protest, if:

1. The relocation is of an existing dealership to a location that is both within the same city as, and is within one mile from, the existing (relocating) dealership location;
2. The establishment of a dealership at the same location of a dealership that has been out of operation for less than one year;
3. The relocation entails the establishment at a location of a dealership that is both within the same city as, and is within one-quarter mile from, the location of a dealership of the same line-make that has been out of operation for less than 90 days; or
4. The establishment entails a display of vehicles at fairs, expositions, or similar exhibits provided that no actual sales are made at the event and the display does not exceed 30 days.

Vehicle Code sections 3062 and 3072 require that if an "off-site sale" is intended, the manufacturer or distributor must give notice to all dealers of the same line-make within 10 miles of the proposed site. Such dealers would have a right to protest the off-site sale, even though a financial institution and a licensed dealer sponsor the event.

Recreational Vehicle Dealers Only

For RVs, the exceptions to notice requirements are found in Vehicle Code section 3072. The exceptions are essentially the same as provided in Vehicle Code 3062 as stated above with the addition of one more exception. That one exception is for an annual show sponsored by a national trade association of recreational vehicle manufacturers that complies with all of the requirements of subdivision (d) of Vehicle Code section 11713.15 (Veh. Code § 3072(b)(4)).

TIME FOR FILING A PROTEST

Filing a timely protest will preclude the manufacturer or distributor from establishing or relocating the dealership until the Board resolves the protest.

The chart below identifies the protest filing period and effective date of the relocation or establishment of a dealership.

Type of Notice	Filing Period	Effective Date of Relocation/ Establishment
A notice by franchisor of intent to establish or relocate franchisee.	20 days from dealer's receipt of notice or 20 days after the end of any appeal procedure provided by the franchisor, whichever is later.	As stated by franchisor.

If, within the above filing period, a franchisee files with the Board a request for additional time to file a protest, the Board or its Executive Director, on a showing of good cause, may grant an additional 10 days to file the protest.

If no protest is filed, or if the protest is not filed within the statutory filing period, the manufacturer or distributor will be able to establish the proposed dealership or relocate the existing dealership without proceeding before the Board.

REQUIRED ELEMENTS OF PROTEST

The required content of a protest pursuant to Vehicle Code sections 3062 and 3072 is set forth in detail in 13 CCR § 585. A protest of the relocation or establishment of a franchise must contain all of the following (see Appendix for sample Form A):

Content Requirements	Regulatory Authority
Must be in writing and be signed by a franchisee or its attorney.[9]	13 CCR § 583
Must be responsive to the specific grounds of the establishment or relocation set forth in the notice and set forth clearly and concisely the factual contentions of the franchisee with respect to the matter referred to in the notice.	13 CCR § 585(b)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 585(d)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 585(e)
Franchisee shall set forth an estimate of the number of days required to complete the hearing.	13 CCR § 585(f)
Franchisee shall request a pre-hearing conference if one is desired.	13 CCR § 585(g)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 585(c)
Franchisee shall simultaneously deliver a $200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

[9] See footnote 4.

GOOD CAUSE

If a timely protest is filed, the manufacturer or distributor cannot establish an additional franchise or relocate an existing franchise until the protest is resolved by the Board. At the hearing, the protesting dealer has the burden of proving that there is good cause to prevent the establishment of the additional dealer or relocation of an existing dealership. In making a determination of good cause pursuant to Vehicle Code sections 3063 or 3073, the Board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

Circumstances	**Vehicle Code Section**
Permanency of the investment.	3063(a), 3073(a)
Effect on the retail motor vehicle (recreational vehicle) business and the consuming public in the relevant market area.	3063(b), 3073(b)
Whether it is injurious to the public welfare for an additional franchise to be established or an existing dealership to be relocated. (Note: For RVs, the language pertaining to "an existing dealership" is not in Section 3073(c)).	3063(c), 3073(c)
Whether the franchisees of the same line-make or same recreational vehicle line-make in the relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the same line-make or recreational vehicle line-make in the market area. This includes the adequacy of motor vehicle or recreational vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel. (Note: For RVs, adequate sales shall be considered, however, not all RV franchise agreements require service facilities, equipment, supply of vehicle parts, and qualified service personnel.)	3063(d), 3073(d)
Whether the establishment of an additional franchise would increase competition and therefore be in the public interest.	3063(e), 3073(e)

DETERMINATION OF PROTEST

If the Board decides the protesting dealer cannot prove good cause to prevent the establishment or relocation, the manufacturer or distributor will be permitted to proceed with its intended action.

ADDITIONAL OR RELOCATED SATELLITE WARRANTY FACILITY

STATUTORY AUTHORITY FOR PROTEST

Vehicle Code section 3062(a)(2) gives a new motor vehicle dealer the right to protest an additional satellite warranty facility or the relocation of an existing satellite warranty facility within 2 miles of any dealership of the same line-make. Satellite warranty facility is defined as "a facility operated by a franchisee where authorized warranty repairs and service are performed and the offer for sale or lease, the display for sale or lease, or the sale or lease of new motor vehicles is not authorized to take place." (Veh. Code § 3062(e)(2)) Any protest filed pursuant to this section is, by statute, filed against the manufacturer or distributor that is attempting to establish or relocate one of its satellite warranty facilities. There are no comparable statutory provisions for RV dealers for such protests.

FRANCHISOR'S NOTICE OF ADDITIONAL OR RELOCATED SATELLITE WARRANTY FACILITY

Vehicle Code section 3062(a)(2) requires that the manufacturer or distributor must first give written notice to the Board and to dealerships of the same line-make within 2 miles of the proposed location.

The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line, the following statement:

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest.

The notices are required to be separately issued to each franchisee and separately issued for each line-make represented by a franchisee. This is consistent with the Vehicle Code and 13 CCR § 593.1. Notices should not be combined to include more than one franchisee nor combined to include more than one line-make.

TIME FOR FILING A PROTEST

Filing a timely protest will preclude the manufacturer or distributor from establishing or relocating the satellite warranty facility until the protest is resolved by the Board. The chart on the next page identifies the protest filing period and effective date of the relocation or establishment of a satellite warranty facility.

If, within the filing period set forth in the table, a franchisee files with the Board a request for additional time to file a protest, the Board or its Executive Director, on a showing of

good cause, may grant an additional 10 days to file the protest.

If no protest is filed, or if the protest is not filed in time, the manufacturer or distributor will be able to establish the proposed satellite warranty facility or relocate the existing satellite warranty facility without proceeding before the Board.

Type of Notice	**Filing Period**	**Effective Date of Relocation/ Establishment**
A notice by franchisor of intent to establish or relocate satellite warranty facility.	20 days from dealer's receipt of notice, or 20 days after the end of any appeal procedure provided by the franchisor, whichever is later.	As stated by franchisor.

REQUIRED ELEMENTS OF PROTEST

The required content of a protest under Vehicle Code section 3062(a)(2) is described in 13 CCR § 585. A protest of the relocation or establishment of a satellite warranty facility must contain all of the following (see Appendix for sample Form A):

Content Requirements	Regulatory Authority
Must be in writing and be signed by a franchisee or its attorney.[10]	13 CCR § 583
Must be responsive to the specific grounds of the establishment or relocation of the satellite warranty facility set forth in the notice and set forth clearly and concisely the factual contentions of the franchisee with respect to the matter referred to in the notice.	13 CCR § 585(b)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 585(d)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 585(e)
Franchisee shall set forth an estimate of the number of days required to complete the hearing.	13 CCR § 585(f)
Franchisee shall request a pre-hearing conference if one is desired.	13 CCR § 585(g)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 585(c)
Franchisee shall simultaneously deliver a $200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

GOOD CAUSE

If a timely protest is filed, the manufacturer or distributor cannot establish an additional satellite warranty facility or relocate an existing satellite warranty facility until the protest is resolved by the Board. At the hearing, the protesting dealer has the burden of proving that there is good cause to prevent the establishment of the additional satellite warranty facility or relocation of an existing satellite warranty facility.

[10] See footnote 4.

In making a determination of good cause pursuant to Vehicle Code section 3063, the Board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

Circumstances	**Vehicle Code Section**
Permanency of the investment.	3063(a)
Effect on the retail motor vehicle business and the consuming public in the relevant market area.	3063(b)
Whether it is injurious to the public welfare for an additional franchise to be established or an existing dealership to be relocated.	3063(c)
Whether the franchisees of the same line-make in the relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the line-make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel.	3063(d)
Whether the establishment of an additional franchise would increase competition and therefore be in the public interest.	3063(e)

DETERMINATION OF PROTEST

If the Board decides the protesting dealer is unable to prove good cause not to allow the establishment or relocation of the satellite warranty facility, the manufacturer or distributor will be permitted to proceed with its intended action.

COMPENSATION FOR DELIVERY AND PREPARATION

STATUTORY AUTHORITY

Vehicle Code sections 3064 and 3074 require every new motor vehicle or recreational vehicle manufacturer and distributor to specify the dealer's delivery and preparation obligations prior to the delivery of new motor vehicles or new recreational vehicles to retail buyers.

FRANCHISOR'S NOTICE OF COMPENSATION FOR DELIVERY AND PREPARATION

Manufacturers and distributors are required to file with the Board a copy of the delivery and preparation obligations and a schedule of compensation to be paid to the dealers for the work and services they shall be required to perform in connection with the delivery and preparation obligations. The schedule of compensation must be reasonable with the issue of reasonableness being subject to the approval of the Board. In order to initiate Board action, a franchisee must file a protest with the Board.

TIME FOR FILING A PROTEST

There is no specific statutory time period in the Vehicle Code within which to file a protest involving delivery and preparation obligations and compensation. Failure to file a protest within a reasonable time, however, could result in a dealer losing the right to a hearing by the Board.

REQUIRED ELEMENTS OF PROTEST

The required content of a protest under Vehicle Code sections 3064 and 3074 is described in 13 CCR § 586. A protest involving delivery and preparation obligations must contain all of the following (see Appendix for sample Form A):

Content Requirements	Regulatory Authority
Must be in writing and be signed by a franchisee or its attorney.[11]	13 CCR § 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR § 586(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 586(a)(3)
Shall state either that the franchisee does or does not desire to appear before the Board.	13 CCR § 586(a)(4)
Franchisee may submit as exhibits to the protest photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 586(a)(2)
Franchisee shall simultaneously deliver a $200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

DETERMINATION OF PROTEST

If a dealer files a protest challenging the reasonableness of the schedule, the Board will resolve the dispute in light of all the relevant circumstances including, but not limited to, the time required to perform each function and the appropriate labor rate.

If there is a hearing, the dealer has the burden of proving that the schedule of compensation is not reasonable (Veh. Code §§ 3066(c) *and 3080(c)*).

[11] See footnote 4.

WARRANTY CLAIMS - Motor Vehicle Dealers

FRANCHISOR'S NOTICE OF COMPENSATION FOR WARRANTY REIMBURSEMENT

Vehicle Code section 3065(a) requires every new motor vehicle manufacturer or distributor (franchisor) to properly fulfill every warranty agreement made by it and to adequately and fairly compensate its dealers (franchisees) for labor and parts used to perform warranty diagnostics, repair, and service.

Manufacturers and distributors are required to file copies of their warranty reimbursement schedules or formulas with the Board, which must be reasonable with respect to the time and compensation allowed to the dealer for the performance of warranty diagnostics, repair, and service.

PROTEST OF THE REASONABLENESS OF THE WARRANTY REIMBURSEMENT SCHEDULE OR FORMULA

The reasonableness of the warranty reimbursement schedule or formula is determined by the Board if a dealer files a protest. (Veh. Code § 3065(a)) In determining the adequacy and fairness of the compensation, the dealer's effective labor rate charged to its retail customers is considered together with other relevant criteria. (Veh. Code § 3065(b))

The time to file the protest is not subject to any specific statutory time limitations. However, failure to file a protest within a reasonable time could result in a dealer losing the right to a hearing before the Board.

If there is a hearing, the franchisee has the burden of proving that the warranty reimbursement schedule or formula is not reasonable, but the franchisor has the burden of proof to establish that a franchisee acted with intent to defraud the franchisor when the issue is material. (Veh. Code § 3066(c))

A successful dealer protest will require the franchisor to amend or replace the schedule or formula for all California franchisees.

PROTEST OF PRE-REPAIR CHALLENGES TO THE REDUCTION IN TIME AND COMPENSATION (LABOR TIME GUIDES) APPLICABLE TO SPECIFIC PARTS OR LABOR OPERATIONS

Manufacturers and distributors are prohibited from imposing a fixed percentage or other reduction in the time and compensation allowed to the dealer for warranty repairs not attributable to a specific repair.

The time and compensation applicable to a specific warranty repair may be reduced only upon 15 days' prior written notice to the dealer.

A franchisee can file a protest to challenge the reduction in time and compensation applicable to specific parts or labor operations. The protest needs to be filed within 6

months "following the franchisee's receipt of the notice of the reduction." If there is a hearing, the franchisor has the burden of "establishing the reasonableness of the reduction and adequacy and fairness of the resulting compensation." (Veh. Code § 3065(a))

A successful dealer protest of a proposed reduction in time and compensation will require the franchisor to reverse the reduction for all California franchisees.

APPROVAL OF WARRANTY CLAIMS

Vehicle Code section 3065(d)(1) requires that warranty claims be approved or disapproved within 30 days after their receipt by the franchisor. Any claim not specifically disapproved in writing within 30 days from receipt by the franchisor shall be deemed approved on the 30th day.

Approved warranty claims must be paid within 30 days of approval. However, Vehicle Code section 3065(d)(5) provides that failure to approve or pay within these time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not violate Article 4 (pertains to motor vehicles other than RVs).

DISAPPROVAL OF WARRANTY CLAIMS FOR A DEFECTIVE PART

Vehicle Code section 3065(c) requires the franchisor that disallows a franchisee's warranty claim for a defective part on the basis that the part was not defective must return the part to the franchisee at the franchisor's expense, or reimburse the franchisee for the part, at the franchisor's option.

DISAPPROVAL OF WARRANTY CLAIMS

A franchisor shall not disapprove a claim unless the claim meets one of the following categories:

1. False;
2. Fraudulent;
3. Repairs were not properly made;
4. Repairs were inappropriate to correct a warranty failure due to an improper act or omission of the franchisee; or
5. Material noncompliance with reasonable and nondiscriminatory documentation and administrative claims submission requirements.

A franchisor who disapproves a claim is required to notify the franchisee in writing of the disapproval 30 days after receipt by the franchisor and each notice shall state the specific grounds upon which the disapproval is based. (Veh. Code § 3065(d)(3))

PROTEST OF INITIAL DISAPPROVAL OF WARRANTY CLAIMS

A franchisee can file a protest of the initial disapproval of a warranty claim within 6 months after receipt of the written notice. If there is a hearing, the franchisor has the burden of proof.

FRANCHISOR PROVIDED "REASONABLE" APPEAL PROCESS

Vehicle Code section 3065(d)(3) requires franchisors to provide a reasonable appeal process that allows the franchisee at least 30 days after receipt of the written disapproval notice to provide additional supporting documentation or information rebutting the disapproval.

If the disapproval is based upon noncompliance with documentation or administrative claims submission requirements, the franchisor shall allow the franchisee at least 30 days from the date of receipt of the notice to cure any material noncompliance.

If the disapproval is rebutted and material noncompliance is cured before the applicable deadline, the franchisor shall approve the claim.

There is potentially two 30-day time periods: (1) reasonable appeal; and (2) opportunity to cure.

FINAL DENIAL OF WARRANTY CLAIM

If the franchisee provides additional supporting documentation or information purporting to rebut the disapproval, attempts to cure noncompliance relating to the claim, or otherwise appeals denial of the claim and the franchisor continues to deny the claim, the franchisor shall provide the franchisee with a written notification of the final denial within 30 days of completion of the appeal process, which shall conspicuously state "Final Denial" on the first page.

PROTEST OF FINAL DENIAL OF WARRANTY CLAIM FOLLOWING A FRANCHISOR'S APPEAL PROCESS

A franchisee can file a protest of the final denial of a warranty claim following a franchisor's appeal process within 6 months after receipt of the written notice. If there is a hearing, the franchisor has the burden of proof.

AUDITS OF FRANCHISEE WARRANTY RECORDS

Audits of franchisee warranty records may be conducted by the franchisor on a reasonable basis, and for a period of 9 months after a claim is paid or a credit issued.

A franchisor shall not select a franchisee for an audit, or perform an audit, in a punitive, retaliatory, or unfairly discriminatory manner.

A franchisor may conduct no more than one random audit of a franchisee in a 9-month period.

The franchisor's notification to the franchisee of any additional audit within a 9-month period shall be accompanied by written disclosure of the basis for that additional audit. (Veh. Code § 3065(e))

DISAPPROVAL OF PREVIOUSLY APPROVED WARRANTY CLAIMS

Previously approved claims shall not be disapproved or charged back to the dealer unless the claim meets one of the following categories:

1. False;
2. Fraudulent;
3. Repairs were not properly made;
4. Repairs were inappropriate to correct a warranty failure due to an improper act or omission of the franchisee; or
5. Material noncompliance with reasonable and nondiscriminatory documentation and administrative claims submission requirements.

These are the same categories for initial disapproval of a warranty claim.

A franchisor shall not disapprove or chargeback a claim based upon an extrapolation from a sample of claims, unless the sample of claims is selected randomly and the extrapolation is performed in a reasonable and statistically valid manner.

If the franchisor disapproves of a previously approved claim following an audit, within 30 days after the audit, the franchisor shall provide to the franchisee a written disapproval notice stating the specific grounds upon which the claim is disapproved.

PROTEST OF WARRANTY CLAIM DISAPPROVAL OF A PREVIOUSLY APPROVED CLAIM FOLLOWING AN AUDIT

A franchisee can file a protest of the warranty claim disapproval of a previously approved claim following an audit within 6 months after receipt of the written notice. If there is a hearing, the franchisor has the burden of proof.

FRANCHISOR PROVIDED "REASONABLE" APPEAL PROCESS

Vehicle Code section 3065(e)(3) requires franchisors to provide a reasonable appeal process that allows the franchisee a reasonable period of not less than 30 days after receipt of the written disapproval notice to respond to any disapproval with additional supporting documentation or information rebutting the disapproval and to cure noncompliance, with the period commensurate with the volume of claims under consideration.

If the franchisee rebuts any disapproval and cures any material noncompliance relating to a claim before the applicable deadline, the franchisor shall not chargeback the franchisee for that claim.

FINAL DENIAL OF WARRANTY CLAIM FOLLOWING AN AUDIT

If the franchisee provides additional supporting documentation or information purporting to rebut the disapproval, attempts to cure noncompliance relating to the claim, or otherwise appeals denial of the claim and the franchisor continues to deny the claim, the franchisor shall provide the franchisee with a written notification of the final denial within 30 days of completion of the appeal process, which shall conspicuously state "Final Denial" on the first page.

PROTEST OF FINAL DENIAL OF WARRANTY CLAIM FOLLOWING AN AUDIT FOLLOWING THE FRANCHISOR'S APPEAL PROCESS

A franchisee can file a protest of the final denial of a warranty claim following an audit following the franchisor's appeal process within 6 months after receipt of the written notice. If there is a hearing, the franchisor has the burden of proof.

FRANCHISOR CHARGEBACK FOR WARRANTY CLAIMS

Vehicle Code section 3065(e)(5) provides that the franchisor shall not chargeback the franchisee until 45 days after receipt of the written disapproval of a previously approved claim following an audit or final denial of warranty claim following an audit following the franchisor's appeal process, whichever is later.

Any chargeback to a franchisee for warranty parts or service compensation shall be made within 90 days of receipt of that written notice.

If the franchisee files a protest pursuant to this subdivision prior to the franchisor's chargeback for denied claims, the franchisor shall not offset or otherwise undertake to collect the chargeback until the Board issues a final order on the protest.

If the Board sustains the chargeback or the protest is dismissed, the franchisor shall have 90 days following issuance of the final order or the dismissal to make the chargeback, unless otherwise provided in a settlement agreement.

In summary, days 45-90 are the only days to chargeback a dealer for warranty claims. A manufacturer or distributor cannot chargeback a dealer ~~on~~ *before* day 44 ~~or before~~, or after day 91. But if a protest is filed prior to a chargeback, then the franchisor cannot chargeback the dealer during the above time period. It must wait until the Board decides the protest and if the protest is dismissed or the Board sustains the chargeback, then the franchisor can chargeback the dealer but must do so within 90 days after the Board action (or within time period allowed by settlement agreement, if any).

However, if a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for an audit and any resulting chargeback may be permitted if the franchisor obtains an order from the Board.

REQUIRED ELEMENTS OF PROTEST

The required content of a protest under Vehicle Code section 3065 is described in 13 CCR § 586. A protest involving warranty claims must contain all of the following (see Appendix for sample Form A):

Content Requirements	Regulatory Authority
Must be in writing and be signed by a franchisee or its attorney.[12]	13 CCR § 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR § 586(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 586(a)(3)
Shall state either that the franchisee does or does not desire to appear before the Board.	13 CCR § 586(a)(4)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 586(a)(2)
Franchisee shall simultaneously deliver a $200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

[12] See footnote 4.

WARRANTY CLAIMS PROTESTS
Motor Vehicle Dealers

Vehicle Code Section	Type of Protest	Notice to Dealer	Time to File Protest	Burden of Proof if there is a Hearing
3065(a) 3065(b)	**Pre-Repair** Reasonableness of the warranty reimbursement schedule or formula	No	None specified	The franchisee has the burden of proof (3066(c))
3065(a)	**Pre-Repair** Challenge to the reduction in time and compensation (labor time guides) applicable to specific parts or labor operations	Written notice of reduction provided by the franchisor to the franchisee.	Within 6 months following the franchisee's receipt of the written notice of reduction	Franchisor has burden to establish the reasonableness of the reduction and adequacy and fairness of the resulting compensation (3065(a))
3065(d)(3)	**Post-Repair** Initial disapproval of warranty claims	Franchisor provides a written notice of disapproval within 30 days after the franchisor's receipt of a warranty claim submitted by a franchisee.	Within 6 months after receipt of the written notice	Franchisor has the burden (3065(d)(6))
3065(d)(4)	**Post-Repair/Post-Appeal** Final denial of warranty claim following franchisor's appeal process	Notice of Final Denial to the franchisee.	Within 6 months after receipt of the written notice	Franchisor has the burden (3065(d)(6))
3065(e)(3)	**Post-Audit** Warranty claim disapproval of a previously approved claim following an audit	Franchisor provides a written Notice of Disapproval within 30 days after the audit stating the specific grounds.	Within 6 months after receipt of the written notice	Franchisor has the burden (3065(e)(6))
3065(e)(4)	**Post-Audit/Post-Appeal** Final denial of warranty claim following an audit following franchisor's appeal process	Notification of the Final Denial to the franchisee.	Within 6 months after receipt of the written notice	Franchisor has the burden (3065(e)(6))

WARRANTY CLAIMS - RV Dealers

STATUTORY AUTHORITY

Vehicle Code section 3075 requires every new recreational vehicle manufacturer or distributor to properly fulfill every warranty agreement made by it and adequately and fairly compensate its dealers for labor and parts used to perform warranty repairs and service.

FRANCHISOR'S NOTICE OF COMPENSATION FOR WARRANTY REIMBURSEMENT

The manufacturers and distributors are required to file copies of their warranty reimbursement schedules or formulas with the Board. The schedule or formula must be reasonable with respect to the time and compensation allowed for the performance of warranty work.

APPROVAL OF WARRANTY CLAIMS

Vehicle Code section 3075(d) also requires that warranty claims be approved or disapproved within 30 days after their receipt by the franchisor. Any claim not specifically disapproved in writing within 30 days from receipt by the franchisor shall be deemed approved on the 30th day.

Approved warranty claims must be paid within 30 days of approval. However, Vehicle Code section 3075(d) states: "Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not constitute a violation of this article [Article 5 RV protests]."

DISAPPROVAL OF WARRANTY CLAIMS

Vehicle Code section 3075(c) requires that the franchisor that disallows a franchisees warranty claim for a defective part on the basis that the part was not defective must return such part to the dealer at the franchisor's expense, or reimburse the dealer for the part, at the franchisor's option.

The dealer is also entitled to written notice of disapproval within 30 days after the warranty claims are received by the franchisor. The notice must contain the specific grounds for disapproval (Veh. Code § 3075(d)).

AUDITS OF FRANCHISEE WARRANTY RECORDS

Audits of franchisee warranty records may be conducted by the franchisor on a reasonable basis, and for a period of 12 months after a claim is paid or a credit issued (Veh. Code § 3075(e)). Any chargeback to a franchisee for warranty parts or service compensation shall be made within 90 days of the completion of the audit. However, if a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for an audit and any resulting chargeback may be permitted if the franchisor obtains an order

from the Board.

TIME FOR FILING A PROTEST

Protests involving warranty disputes are not subject to any specific statutory time limitations for filing. However, failure to file a protest within a reasonable time could result in a dealer losing the right to a hearing before the Board.

REQUIRED ELEMENTS OF PROTEST

The required content of a protest under Vehicle Code section 3075 is described in 13 CCR § 586. A protest involving warranty claims must contain all of the following (see Appendix for sample Form A):

Content Requirements	Regulatory Authority
Must be in writing and be signed by a franchisee or its attorney.[13]	13 CCR § 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR § 586(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 586(a)(3)
Shall state either that the franchisee does or does not desire to appear before the Board.	13 CCR § 586(a)(4)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 586(a)(2)
Franchisee shall simultaneously deliver a $200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

[13] See footnote 4.

GOOD CAUSE

Franchisee claims for warranty compensation shall not be disapproved except for good cause such as performance of non-warranty repairs, lack of material documentation, or fraud.

DETERMINATION OF PROTEST

If a protest is filed, the Board shall determine whether the schedule or formula is reasonable, taking into account the dealer's labor rate to its retail customers. If there is a hearing, the franchisee has the burden of proving that the warranty reimbursement schedule is not reasonable, but the franchisor has the burden of proof to establish that a franchisee acted with intent to defraud the franchisor when the issue is material (Veh. Code § *3080(c)*).

FRANCHISOR INCENTIVE PROGRAM CLAIMS - Motor Vehicle Dealers

STATUTORY AUTHORITY

Pursuant to Vehicle Code section 3065.1, all claims made by a new motor vehicle franchisee for payment under the terms of a franchisor incentive program shall be approved or disapproved within 30 days from the date of receipt of the claim by the franchisor.

FRANCHISOR'S NOTICE OF DENIAL OF FRANCHISOR INCENTIVE PROGRAM REIMBURSEMENT

Vehicle Code section 3065.1(a) requires that a franchisor who denies payment under the terms of a franchisor incentive program shall notify the franchisee within 30 days after receipt by the franchisor and provide specific grounds on which the disapproval was based.

APPROVAL/DISAPPROVAL OF FRANCHISOR INCENTIVE PROGRAM REIMBURSEMENT

Any claim not specifically disapproved in writing within 30 days from receipt shall be deemed approved on the 30th day. If incentive program compensation claims are approved, they must be paid within 30 days of approval. However, Vehicle Code section 3065.1(f) provides that the failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not constitute a violation of Article 4 (pertains to motor vehicles other than RVs).

DISAPPROVAL OF A FRANCHISOR INCENTIVE PROGRAM CLAIMS

A franchisor shall not disapprove a claim unless the claim meets one of the following categories:

1. False;
2. Fraudulent;
3. The claim is ineligible under the terms of the incentive program as previously communicated to the franchisee; or
4. Material noncompliance with documentation and administrative claims submission requirements, if the requirements are reasonable and nondiscriminatory.

PROTEST OF INITIAL DISAPPROVAL OF FRANCHISOR INCENTIVE PROGRAM CLAIMS

A franchisee can file a protest of the initial disapproval of a franchisor incentive program claim within 6 months after receipt of the written notice. If there is a hearing, the franchisor has the burden of proof.

FRANCHISOR PROVIDED "REASONABLE" APPEAL PROCESS

Vehicle Code section 3065.1(c) requires franchisors to provide a reasonable appeal process that allows the franchisee at least 30 days after receipt of the written disapproval notice to provide additional supporting documentation or information rebutting the disapproval.

If the disapproval is based upon noncompliance with documentation or administrative claims submission requirements, the franchisor shall allow the franchisee at least 30 days from the date of receipt of the disapproval notice to cure any material noncompliance.

If the disapproval is rebutted, and material noncompliance is cured before the applicable deadline, the franchisor shall approve the claim.

There are potentially two 30-day time periods: (1) reasonable appeal; and (2) opportunity to cure.

FINAL DENIAL OF FRANCHISOR INCENTIVE PROGRAM CLAIM

If the franchisee provides additional supporting documentation or information purporting to rebut the disapproval, attempts to cure noncompliance relating to the claim, or otherwise appeals denial of the claim and the franchisor continues to deny the claim, the franchisor shall provide the franchisee with a written notification of the final denial within 30 days of completion of the appeal process, which shall conspicuously state "Final Denial" on the first page.

PROTEST OF FINAL DENIAL OF FRANCHISOR INCENTIVE PROGRAM CLAIM FOLLOWING A FRANCHISOR'S APPEAL PROCESS

A franchisee can file a protest of the final denial of a franchisor incentive program claim following a franchisor's appeal process within 6 months after receipt of the written notice. If there is a hearing, the franchisor has the burden of proof.

AUDITS OF FRANCHISEE INCENTIVE PROGRAM RECORDS

Audits of franchisee incentive program records may be conducted by the franchisor on a reasonable basis, and for a period of 9 months after a claim is paid or a credit issued.

A franchisor shall not select a franchisee for an audit, or perform an audit, in a punitive, retaliatory, or unfairly discriminatory manner.

A franchisor may conduct no more than one random audit of a franchisee in a 9-month period.

The franchisor's notification to the franchisee of any additional audit within a 9-month period shall be accompanied by written disclosure of the basis for that additional audit.

(Veh. Code § 3065.1(g)(1))

DISAPPROVAL OF PREVIOUSLY APPROVED FRANCHISOR INCENTIVE PROGRAM CLAIMS

Previously approved claims shall not be disapproved or charged back to the dealer unless the claim meets one of the following categories:

1. False;
2. Fraudulent;
3. The claim is ineligible under the terms of the incentive program as previously communicated to the franchisee; or
4. Material noncompliance with documentation and administrative claims submission requirements, if the requirements are reasonable and nondiscriminatory.

These are the same categories for initial disapproval of a franchisor incentive program claim.

A franchisor shall not disapprove or chargeback a claim based upon an extrapolation from a sample of claims, unless the sample of claims is selected randomly and the extrapolation is performed in a reasonable and statistically valid manner.

If the franchisor disapproves of a previously approved claim following an audit, within 30 days after the audit, the franchisor shall provide to the franchisee a written disapproval notice stating the specific grounds upon which the claim is disapproved.

PROTEST OF FRANCHISOR INCENTIVE PROGRAM CLAIM DISAPPROVAL OF A PREVIOUSLY APPROVED CLAIM FOLLOWING AN AUDIT

A franchisee can file a protest of the franchisor incentive program claim disapproval of a previously approved claim following an audit within 6 months after receipt of the written notice. If there is a hearing, the franchisor has the burden of proof.

FRANCHISOR PROVIDED "REASONABLE" APPEAL PROCESS

Vehicle Code section 3065.1(g)(3) requires franchisors to provide a reasonable appeal process that allows the franchisee a reasonable period of not less than 30 days after receipt of the written disapproval notice to respond to any disapproval with additional supporting documentation or information rebutting the disapproval and to cure noncompliance, with the period commensurate with the volume of claims under consideration.

If the franchisee rebuts any disapproval and cures any material noncompliance relating to a claim before the applicable deadline, the franchisor shall not chargeback the franchisee for that claim.

FINAL DENIAL OF FRANCHISOR INCENTIVE PROGRAM CLAIM FOLLOWING AN AUDIT

If the franchisee provides additional supporting documentation or information purporting to rebut the disapproval, attempts to cure noncompliance relating to the claim, or otherwise appeals denial of the claim and the franchisor continues to deny the claim, the franchisor shall provide the franchisee with a written notification of the final denial within 30 days of completion of the appeal process, which shall conspicuously state "Final Denial" on the first page.

PROTEST OF FINAL DENIAL OF FRANCHISOR INCENTIVE PROGRAM CLAIM FOLLOWING AN AUDIT FOLLOWING THE FRANCHISOR'S APPEAL PROCESS

A franchisee can file a protest of the final denial of a franchisor incentive program claim following an audit following the franchisor's appeal process within 6 months after receipt of the written notice. If there is a hearing, the franchisor has the burden of proof.

FRANCHISOR CHARGEBACK FOR FRANCHISOR INCENTIVE PROGRAM CLAIMS

Vehicle Code section 3065.1(g)(5) provides that the franchisor shall not chargeback the franchisee until 45 days after receipt of the written disapproval of a previously approved claim following an audit or final denial of a franchisor incentive program claim following an audit following the franchisor's appeal process, whichever is later.

If the franchisee cures any material noncompliance relating to a claim, the franchisor shall not chargeback the dealer for that claim.

Any chargeback to a franchisee for incentive program compensation shall be made within 90 days of receipt of that written notice.

If the Board sustains the chargeback or the protest is dismissed, the franchisor shall have 90 days following issuance of the final order or the dismissal to make the chargeback, unless otherwise provided in a settlement agreement.

If the franchisee files a protest pursuant to this subdivision prior to the franchisor's chargeback for denied claims, the franchisor shall not offset or otherwise undertake to collect the chargeback until the Board issues a final order on the protest. (Veh. Code § 3065.1(g)(6))

In summary, days 45-90 are the only days to chargeback a dealer for franchisor incentive program claims. A manufacturer or distributor cannot chargeback a dealer ~~on~~ *before* day 44 ~~or before~~, or after day 91. But if a protest is filed prior to a chargeback, then the franchisor cannot chargeback the dealer during the above time period. It must wait until the Board decides the protest and if the protest is dismissed or the Board sustains the chargeback, then the franchisor can chargeback the dealer but must do so within 90 days after the Board action (or within time period allowed by settlement agreement, if any).

However, if a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for an audit and any resulting chargeback may be permitted if the franchisor obtains an order from the Board.

REQUIRED ELEMENTS OF PROTEST

The required content of a protest under Vehicle Code section 3065.1 is described in 13 CCR § 586. A protest involving franchisor incentive program claims must contain all of the following (see Appendix for sample Form A):

Content Requirements	Regulatory Authority
Must be in writing and be signed by a franchisee or its attorney.[14]	13 CCR § 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR § 586(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 586(a)(3)
Shall state either that the franchisee does or does not desire to appear before the Board.	13 CCR § 586(a)(4)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 586(a)(2)
Franchisee shall simultaneously deliver a $200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

[14] See footnote 4.

FRANCHISOR INCENTIVE PROGRAM PROTESTS
Motor Vehicle Dealers

Vehicle Code Section	Type of Protest	Notice to Dealer	Time to File Protest	Burden of Proof if there is a Hearing
3065.1(a)	**Initial Disapproval** Initial disapproval of franchisor incentive program claims	Franchisor provides a written notice of disapproval within 30 days after the franchisor's receipt of a claim submitted by a franchisee.	6 months from receipt of the written notice	Franchisor has the burden (3065.1(e))
3065.1(d)	**Final Denial/ Post-Appeal** Final denial of franchisor incentive program claim following a franchisor's appeal process	Written notice of Final Denial to the franchisee.	6 months from receipt of the written notice	Franchisor has the burden (3065.1(e))
3065.1(g)(3)	**Post-Audit** Franchisor incentive program claim disapproval of a previously approved claim following an audit	Franchisor provides a written notice of disapproval within 30 days after the audit stating the specific grounds.	6 months after receipt of the written notice	Franchisor has the burden (3065.1(g)(6))
3065.1(g)(4)	**Post-Audit/Post-Appeal/Final Denial** Final denial of a franchisor incentive program claim following an audit following the franchisor's appeal process	Written notification of the Final Denial.	6 months after receipt of the written notice	Franchisor has the burden (3065.1(g)(6))

FRANCHISOR INCENTIVE PROGRAM CLAIMS - RV Dealers

STATUTORY AUTHORITY

Pursuant to Vehicle Code section 3076, all claims made by a recreational vehicle franchisee for payment under the terms of a franchisor incentive program shall be approved or disapproved within 30 days from the date of receipt of the claim by the franchisor.

FRANCHISOR'S NOTICE OF DENIAL OF FRANCHISOR INCENTIVE PROGRAM REIMBURSEMENT

Vehicle Code section 3076(a) requires that a franchisor who denies payment under the terms of a franchisor incentive program, shall notify the franchisee within 30 days and provide specific grounds on which the disapproval was based.

APPROVAL/DISAPPROVAL OF FRANCHISOR INCENTIVE PROGRAM REIMBURSEMENT

Any claim not specifically disapproved in writing within 30 days shall be deemed approved on the 30th day. If incentive program compensation claims are approved, they must be paid within 30 days of approval. However, Vehicle Code section 3076(a) provides that the failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not constitute a violation of Article 5, pertaining to RVs.

AUDITS OF FRANCHISEE INCENTIVE PROGRAM RECORDS

Vehicle Code section 3076(b) provides for audits of franchisee incentive program records if reasonable and for a period of 18 months after a claim is paid or a credit issued. Any chargeback to a franchisee for incentive program compensation shall be made within 90 days of completion of the audit. However, if a false claim was submitted by the franchisee with the intent to defraud the franchisor, a longer period for the audit and any resulting chargeback may be permitted if the franchisor obtains an order to that effect from the Board.

TIME FOR FILING A PROTEST

Following the disapproval of a claim, a franchisee shall have one year from receipt of the notice of disapproval in which to appeal and file a protest with the Board.

REQUIRED ELEMENTS OF PROTEST

The required content of a protest under Vehicle Code section 3076 is described in 13 CCR § 586. A protest involving franchisor incentive program claims must contain all of the following (see Appendix for sample Form A):

Content Requirements	Regulatory Authority
Must be in writing and be signed by a franchisee or its attorney.[15]	13 CCR § 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR § 586(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 586(a)(3)
Shall state either that the franchisee does or does not desire to appear before the Board.	13 CCR § 586(a)(4)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 586(a)(2)
Franchisee shall simultaneously deliver a $200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

GOOD CAUSE

Franchisee claims for incentive program compensation shall not be disapproved except for good cause, such as ineligibility under the terms of the incentive program, lack of material documentation, or fraud.

DETERMINATION OF PROTEST

The franchisee has the burden of proof, but the franchisor has the burden of proof to establish that a franchisee acted with intent to defraud the franchisor when the issue is material (Veh. Code § *3080(c)*).

[15] See footnote 4.

HEARING PROCEDURES

PRE-HEARING PROCEDURE

Upon receiving a protest, the Board shall institute hearing proceedings akin to those of a formal civil trial, including the scheduling of various pre-hearing conferences, settlement conferences, arrangements for discovery, identification of witnesses, and so on. The Board may impose sanctions if a party fails to comply with the Board's discovery orders or fails to participate properly in a settlement conference.

DISCOVERY

Pursuant to Vehicle Code section 3050.1, the Board may authorize the parties to engage in the civil discovery process. Discovery is limited to requests for depositions and demands for production of documents (Code Civ. Pro. § 2016.010, et seq.), with the exception of provisions for written interrogatories (Code Civ. Proc. § 2030.010). ~~13 CCR §~~ *Section* 551.6 *of the Board's regulations* implements and makes specific the Board's procedures for requesting depositions where the witness resides within California or outside of California.

The enactment of the Electronic Discovery Act (Assembly Bill 5, Stats. 2009, ch. 5, "Act"), effective June 29, 2009, broadened the categories of discoverable materials (documents, tangible things, land or other property) by adding "electronically stored information" (ESI).

Effective January 1, 2013, sections of the Civil Discovery Act relating to ESI were amended in order to address several inconsistencies (Senate Bill 1574, Stats. 2012, ch. 72). ESI is now included among the things under a witnesses control that the witness would be bound by law to produce pursuant to a subpoena. Additionally, when any method of discovery permits, compels, prevents, or limits the production, inspection, copying, testing, or sampling of documents or tangible things, the same method would also apply to ESI. In general, if a demand for production does not specify a form or forms for producing a type of ESI, the responding party would be required to produce the information in the form or forms in which it is ordinarily maintained or in a form that is reasonably usable, but need not produce the same ESI in more than one form.

SUBPOENAS

Authority for issuing subpoenas in Board proceedings is found in Vehicle Code section 3050.1 and 13 CCR § 551.2.

13 CCR § 551.2(b) specifically incorporates Code of Civil Procedure section 1985, et seq., excepting the provisions of section 1985(c). Section 1985.8 imposes additional requirements on the parties, (or the court, if necessary), to resolve ESI issues as to the form, burdens and expenses of production, shifting or allocation of costs, and issues arising from other characteristics of ESI. The Act requires the parties, or the court, to weigh various cost/benefit factors in light of the amount in controversy in the proceeding to

shape and limit the scope and nature of requests to produce ESI.

Unlike the civil courts, the parties cannot issue their own subpoenas. On the request of any party, the Board, its Executive Director or an ALJ may issue subpoenas for the production of papers, records, and books by a witness or a deponent, and the appearance of a non-party witness or deponent. Hearing subpoenas are issued in accordance with 13 CCR § 551.2(b) and an affidavit is not required to support the request. For a hearing subpoena duces tecum, an affidavit must accompany the request.

Subpoenas for the attendance and testimony of a non-party deponent, or for a subpoena duces tecum for deposition of a non-party, are issued by the Board in accordance with Code of Civil Procedure section 2016.010, et seq., excepting the provisions of section 2020.210, subdivisions (a) and (b). (13 CCR § 551.2(c)) No affidavits are required. Counsel for the parties can issue notices of depositions to parties. (Code Civ. Proc. § 2025.010, et seq.) Subpoenas for out-of-state, non-party witnesses or deponents will be issued by the Board, but need to be enforced in the out-of-state court. (Code Civ. Proc. § 2026.010, et seq.)

Government Code section 11450.30 and 13 CCR § 551.2(e) permit a person served with a subpoena or a subpoena duces tecum to object to its terms by a motion for a protective order, including a motion to quash. The assigned ALJ would resolve the objection. The ALJ may make another order that is appropriate to protect the parties or the witness from unreasonable or oppressive demands, including violations of the right to privacy.

Following service of the ~~original~~ subpoena on the witness or deponent, a copy of the subpoena and ~~an original~~ executed proof of service shall be filed with the Board. (13 CCR § 551.2(d))

SUMMARY OF BOARD ACTION

All hearings on protests filed pursuant to Vehicle Code sections 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, or 3076, may be considered by the entire Board[16] or may, at its discretion be conducted by one of the Board's ALJs. At the hearing, oral argument is heard, evidence is admitted, testimony is received, and a written decision is rendered. The procedures are described in detail in Vehicle Code section*s* 3066 *and 3080*. The Board on receiving a protest does the following:

Step	Action
1	By order fix a time within sixty (60) days of the order and place of hearing.[17]
2	Send a copy of the order to the franchisor, the protesting franchisee, and all individuals and groups that have requested notification by the Board of protests and decisions by the Board. • Except in the case of a franchisee who deals exclusively in motorcycles, the Board or its Executive Director may accelerate or postpone the date initially established for the hearing. • For the purpose of accelerating or postponing the hearing date, good cause must be established and in no event may the rescheduled hearing date be more than 90 days after the Board's initial order. • "Good cause" for accelerating or postponing a hearing includes, but is not limited to, the effects on, and any irreparable harm to, the parties or interested persons or groups if the request for a change in hearing date is not granted. • Application for continuance shall be in writing and filed with the Executive Director at least 10 days prior to the date of hearing. No continuances otherwise will be granted except in extreme emergencies such as serious accident or death. (13 CCR § 592)
3	The Board or an ALJ designated by the Board presides over merits hearings on protests.[18]

[16] Board ALJs generally preside over merits hearings not the Board itself. (See discussion on pages 9-10 pertaining to dealer member participation in Article 4 protests.)
[17] In practice, the parties stipulate to a date for the merits hearing and the Board issues the order of time and place of hearing approximately 30 days prior to the hearing.
[18] See footnote 16.

STIPULATION OF FACT

A hearing initiated by the filing of a protest may be held in whole or in part on a stipulation of fact, which is essentially an agreement between the parties defining points that are not in contention, and other parts of the dispute that have been resolved. Stipulations are of value in that they tend to facilitate and expedite conflict resolution. (See 13 CCR § 587 for procedural details of stipulation of fact before the Board.)

STIPULATED DECISIONS

The Board may adopt stipulated decisions and orders without a hearing pursuant to Vehicle Code section*s* 3066 *and 3080* to resolve one or more issues raised by a protestant or petitioner before the Board. If the Board adopts a stipulated decision and order to resolve a protest filed under Vehicle Code section 3060 or 3070, and the parties stipulate that good cause exists to terminate, a hearing requiring a determination of good cause will not be required. (Veh. Code § 3050.7(b))

HEARINGS OPEN TO THE PUBLIC; PROTECTIVE ORDERS

Hearings before the Board or an ALJ designated by the Board are open to the public. For good cause shown, a party may seek an order closing all or part of the hearing or for other protective orders as set forth in Government Code section 11425.20 and 13 CCR § 551.20. The motion may be in writing or made orally on the record. It may be made at the commencement of or during the course of the hearing but must be made as early as is practicable. The motion shall clearly identify the relief sought; the facts, circumstances, and legal authority; and shall include declarations or evidence that support the motion. The ALJ has discretion to allow an oral or written opposition to the motion. When ruling on the motion, the ALJ shall specifically set forth the facts, legal basis, and findings that support any protective order, order to seal parts of the record, or order to close the hearing to the public. The motion, opposition, and any resulting orders then become part of the record.

FAILURE TO APPEAR AT A HEARING

Any party who fails to appear at a hearing will not be entitled to a further opportunity to be heard unless good cause for such failure is shown to the Board or to the ALJ within five (5) days thereafter. The lack of such a showing may, in the discretion of the Board or the ALJ, be interpreted as an abandonment of interest by the party in the subject matter of the proceeding. (13 CCR § 589)

DECISION OF THE BOARD

When matters are submitted to the Board for decision, or the Board receives a proposed decision of the ALJ, the Board shall take the matter under submission and conduct deliberations in executive session. The deliberations of the Board shall be in private and shall not be reported. (Veh. Code § 3008; 13 CCR § 588)

The decision of the Board shall be in writing, contain findings of fact, and a determination of the issues presented. The Board shall sustain, conditionally sustain, overrule, or conditionally overrule the protest. The decision becomes final when delivered or mailed to the parties and there are no provisions for reconsideration or rehearing. If the Board fails to act within 30 days after the close of the hearing, within 30 days after the Board receives a proposed decision where the case is heard before an ALJ, or within a period which may be mutually agreed on by the parties, then the proposed action of the franchisor shall be deemed to be approved. (Veh. Code §§ 3067 *and 3081*)

COURT REPORTING AND TRANSCRIPTS OF BOARD PROCEEDINGS

The Board arranges for a court reporter for all Board meetings, all hearings on the merits of a protest or a petition, and for all hearings on motions that may be dispositive. Parties to actions before the Board may order transcripts of hearings and arrange for delivery and payment directly from the court reporter.

Under the authority of 13 CCR § 551.7 the Board may assume all or part of the cost of reporting any proceedings or may allocate costs entirely to one of the parties or apportion it among the various parties at its discretion. For all merits hearings and dispositive motions, reporting costs will be allocated as follows:

Circumstances	Reporting Costs including Appearance and Transcript Delivery Fees, Per Diem Costs, Realtime Set-Up Fees, Expedite Rates, Cancellation Fees and any other Costs	Transcript Fees
Hearings on the merits and dispositive motions[19] - First Day	Board (excluding Realtime set-up fees)	Board (requesting party or parties may order and pay for copies of official transcripts)
Hearings on the merits and dispositive motions - After First Day	Participating parties	Participating parties
Other motions (venue, consolidation, continuation, etc.)	Requesting party or parties	Requesting party or parties
Pre-hearing conference	Requesting party or parties	Requesting party or parties
Discovery disputes (ruling on objections to production, motions to quash, etc.)	Requesting party or parties	Requesting party or parties

As indicated above, for the first hearing day (merits or dispositive motion), the Board will be responsible for arranging reporting services, paying for the reporter's appearance fee, the

[19] "Dispositive motions" are those that result in a final determination of the protest or petition before the Board.

delivery fee and any other costs excluding the Realtime set-up fees, and the Board's cost of the hearing transcript. Counsel will remain responsible for purchasing their own transcript, if desired. For each subsequent day, the Board will arrange reporting services and will order the parties, on an equal basis, to pay the contracted court reporter service for the reporter's appearance fee, the delivery fee and any other costs including Realtime set-up fees, and the Board's cost of the hearing transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.

In any other instance, where any party or parties deem reporting services necessary (including requests for reporter's appearance and for transcripts), the requesting party (or parties on any basis they agree upon) will be responsible for arranging reporter services and will be responsible for payment to the reporting service of the reporter's appearance fee~~s~~, the delivery fee, and any other costs. Counsel can utilize the Board's contracted reporting service. The requesting party or parties will also be responsible for providing the Board with a certified copy of the transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.

PETITIONS

STATUTORY AUTHORITY FOR PETITIONS

Vehicle Code section 3050(c) provides for any person to petition the Board to consider any matter concerning the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative.

FILING A PETITION WITH THE BOARD

A licensee or member of the public wishing to bring a dispute before the Board pursuant to Vehicle Code section 3050(c) is required to file a petition (see Appendix for sample Form B). In the past, petitions filed with the Board have alleged such things as the unreasonable refusal of a franchisor to approve a change in ownership, unreasonable refusal of a franchisor to approve a relocation, discrimination in allocation of products, failure to supply products authorized to be sold under the terms of the franchise, and other violations of the Vehicle Code. Such petitions requested a hearing before the Board and sought relief in the form of a Board order that required the respondent to either do, undo, or refrain from doing some action that caused harm to the licensee petitioner.

However, as a result of *Mazda Motor of America, Inc.,* v. *California New Motor Vehicle Board; David J. Phillips Buick-Pontiac, Inc., Real Party in Interest* (2003) 110 Cal.App.4th 1451 [2 Cal.Rptr.3d 866], the Board's jurisdiction to hold hearings and issue such orders is now limited to petitioners who are members of the public under Vehicle Code section 3050(c)(2). In all instances where licensees are the petitioners, the Board may only direct the Department to investigate or take a licensing action against the respondent under Vehicle Code section 3050(c)(1) and (3).

In all circumstances, the petition shall be served on the respondent and proof of service filed with the Board.

TIME FOR FILING A PETITION

There are no specific statutory time limits in the Vehicle Code within which a petition must be filed, but failure to file the petition within a reasonable time after the occurrence of events giving rise to the basis for the petition could result in the Board refusing to take any action.

The respondent shall file a written answer within 30 days of the date the petition is served on the respondent (13 CCR § 558).

PETITION FILING FEE

A filing fee of $200, which should be in the form of a check, money order or authorized credit card charge payable to the New Motor Vehicle Board, must accompany the petition and answer. In the event of a financial hardship, either the petitioner or respondent may submit a request for a fee waiver, requesting that the Executive Director, upon a showing of good cause, waive the $200 filing fee (13 CCR § 553.40). (Samples are available on the Board's website.)

REQUIRED ELEMENTS OF PETITION

The required content of a petition under Vehicle Code section 3050(c) is described in 13 CCR § 555 (see Appendix for sample Forms B1 and B2).

Content Requirements	Regulatory Authority
Must set forth in clear and concise language the nature of the matter, which the petitioner wishes the Board to consider.	13 CCR § 555
Must contain the petitioner's name, mailing address and telephone number; the name, mailing address and telephone number of the petitioner's attorney or authorized agent, if any; and the name and address of the licensee or applicant for license (respondent) whose activities or practices are in question. All correspondence and notices to the petitioner shall thereafter be addressed to petitioner's address, if the petitioner appears in person, or to the address of the petitioner's attorney or agent, if so represented.	13 CCR § 555(a)
Must include the names, residence addresses and business addresses of persons and the dates, places and specific actions or practices involved.	13 CCR § 555(b)
Shall include a concise recitation of applicable law and citation to the applicable statutes and authorities if the actions or practices described in the petition are alleged to be a violation of law.	13 CCR § 555(c)
For petitioners who are members of the public only, petitioner shall state if the petitioner desires that the Board hear, mediate, arbitrate, or resolve a difference between the petitioner and respondent, and describe the relief sought.	13 CCR § 555(d)
Petitioner may submit, as exhibits to the petition, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the petition.	13 CCR § 555(e)
For petitioners who are members of the public only, petitioner shall set forth an estimate of the number of days required to complete the hearing.	13 CCR § 555(f)
For petitioners who are members of the public only, petitioner shall request a pre-hearing conference if one is desired.	13 CCR § 555(g)
Petitioner shall simultaneously deliver a $200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Petitioner shall serve a copy of the petition on the respondent and proof of service shall accompany the petition submitted to the Board.	13 CCR § 555.1 13 CCR § 551.24

FIRST CONSIDERATION

If the petitioner is a member of the public seeking relief under Vehicle Code section 3050(c)(2), upon the filing of a petition with the Board, a copy shall be forwarded by the Executive Director of the Board to each Board member for consideration. Within 10 days of receipt of a copy of the petition, unless any member of the Board notifies the Executive Director of an objection, the Executive Director shall set the matter for a hearing.

RESOLUTION OF PETITIONS WITHOUT A HEARING

If the petitioner is a licensee or member of the public seeking relief under Vehicle Code section 3050(c)(1) and/or (3), these petitions would not be submitted to the Board for first consideration, as the authority for first consideration (13 CCR § 557), limits first consideration to matters in which a hearing is sought, i.e., Vehicle Code section 3050(c)(2) petitions. These petitions would be agendized for consideration of the relief requested by the Petitioner at the next regularly scheduled meeting. Such petitions are not assigned to an ALJ and are not subject to the normal evidentiary hearing process. The Board members, at a noticed meeting, would hear from the parties by way of written and oral arguments, and consider granting the relief requested. After consideration, the public members of the Board shall take final action and issue a written decision that either grants the appropriate relief pursuant to Vehicle Code section 3050(c)(1) or (c)(3), or orders the petition dismissed (13 CCR § 562(b), (d), and (e)). The public members of the Board may also request further briefing and/or the submission of further evidence and continue the matter to a later open meeting for consideration and final action.

CHALLENGE TO PRESIDING OFFICER

A party may request disqualification of a Board member or an ALJ for cause prior to the taking of evidence by filing an affidavit stating the grounds for the request (13 CCR § 551.1). Further, 13 CCR § 551.12(b) entitles a party in a Board proceeding to one disqualification without cause (peremptory challenge) of an assigned ALJ by filing the peremptory challenge with the Board no later than either 20 days from the date of the order of time and place of hearing identifying the ALJ or 20 days prior to the date scheduled for commencement of the hearing, whichever is earlier (13 CCR § 551.12(b)(1)). Parties would not be entitled to a peremptory challenge in any proceeding relating to applications for temporary relief or interim orders. Except for the convenience of the Board or for good cause shown, no hearing shall be continued by the filing of a peremptory challenge.

MOTION FOR INTERVENTION

13 CCR § 551.13 permits any person, including a Board member, concerned with the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch or representative to file a motion to intervene in a pending petition.

AMICUS CURIAE BRIEFS

The Board, its Executive Director, or an ALJ may, in his or her discretion, allow the filing of amicus curiae briefs (13 CCR § 551.13).

SUMMARY OF BOARD ACTION

For petitions seeking relief under Vehicle Code section 3050(c)(1) and/or (3) brought by a franchisee, including RV franchisees, a member of the Board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide any petition (Veh. Code § 3050(c)). For petitions brought by members of the public seeking Vehicle Code section 3050(c)(1) and/or (3) relief, all members of the Board may participate.

After considering this type of petition, the Board may do any one or any combination of the following:

(1) Direct the Department to conduct an investigation and submit a written report;
(2) Order the Department to exercise any and all authority or power that the Department may have with respect to the issuance, renewal, refusal to renew, suspension, or revocation of the license of respondent; and/or
(3) Order the petition dismissed, with or without prejudice.

As stated above, if the petitioner is a member of the public seeking relief under Vehicle Code section 3050(c)(2), the Board retains the authority to hear and/or mediate the matter.

HEARING PROCEDURES

The Board's powers in relation to petitions are discretionary, and there is no automatic right to a hearing for a member of the public seeking relief under Vehicle Code section 3050(c)(2). If the Board orders a hearing, the pre-hearing procedures are similar to those involving protests. For procedural details for hearings on petitions, see 13 CCR § 580.

INFORMAL MEDIATION

Prior to a member of the public initiating a petition seeking relief under Vehicle Code section 3050(c)(2), a party or parties may request the Board informally mediate the potential dispute, that is, the activities or practices of a licensee or applicant for a license that are in question (13 CCR §§ 551.14-551.17). If both parties consent to informal mediation, then a mutually agreeable date for the mediation is calendared. Each party files and serves a pre-mediation statement setting forth the facts, issues and proposed resolution of the matter. The Board, its Executive Director, or an ALJ designated by the Board or its Executive Director preside over the informal mediation and may authorize discovery (other than interrogatories) as appropriate. Evidence in the form of declarations may also be considered. All communications, negotiations, and settlement discussions between the participants of an informal mediation are confidential. At any time during this

process, either party may request that the informal mediation be converted to a formal petition.

MEMBERS OF THE PUBLIC IN RELATION TO NEW RECREATIONAL VEHICLE TRANSACTIONS

Members of the public have all the rights and remedies available in disputes with licensees in new recreational vehicle transactions as they do in transactions with other types of new motor vehicles under the jurisdiction of the Board with one distinction. Vehicle Code section 3078(a) states:

> If the board receives a complaint from a member of the public seeking a refund involving the sale or lease of, or a replacement of, a recreational vehicle, as defined in subdivision (a) of Section 18010 of the Health and Safety Code, from a ~~motor~~ *recreational* vehicle dealership, as defined in ~~paragraph (1) of subdivision (e)~~ *subdivision (d)* of Section 3072, the board shall recommend that the complainant consult with the Department of Consumer Affairs.

Thus, if a member of the public specifically seeks a refund or a replacement of a new recreational vehicle, the Board shall recommend that the complaint be referred to the Department of Consumer affairs, rather than the Board. However, nothing precludes a member of the public from seeking help from the Board in resolving the dispute as is available for any other new motor vehicle purchaser.

APPEALS FROM DECISIONS OF THE DEPARTMENT OF MOTOR VEHICLES

STATUTORY AUTHORITY FOR APPEALS

Vehicle Code sections 3050(b) and 3052 provide for the right of an applicant for, or holder of a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch or representative to file an appeal with the Board after any final decision of the Director of the Department which adversely affects the occupational license of the appellant, such as the refusal to renew, suspension, or revocation of the license (see Appendix for sample Form C). All Vehicle Code sections providing Board authority for appeals are applicable to new recreational vehicle licensees.

BOARD'S RESPONSIBILITIES IN AN APPEAL FROM A DECISION OF THE DEPARTMENT

The Board acts as an appellate body reviewing the record of Departmental proceedings, and in deciding the appeal, may also consider any other evidence properly brought before the Board. There are no restrictions in the Vehicle Code on dealer member participation in appeal hearings. Briefs on the disputed issues are filed by the appellant and the Department (Veh. Code § 3053).

FILING APPEALS WITH THE BOARD

In general, the notice of appeal must be filed with the Board on the 10th day after the last day on which reconsideration of the final decision of the Department can be ordered (Veh. Code § 3052(a) and 13 CCR § 566). A filing fee of $200, which should be in the form of a check, money order or authorized credit card charge payable to the New Motor Vehicle Board, must accompany the appeal. In the event of a financial hardship, the appellant may submit a request for a fee waiver, requesting that the Executive Director, upon a showing of good cause, waive the $200 filing fee (13 CCR § 553.40). (Samples are available on the Board's website.) A copy of the notice of appeal shall be served on the Department and proof of service shall accompany the notice filed with the Executive Director of the Board (13 CCR §§ 570 and 551.24). An appeal is deemed filed upon its receipt by the Board via regular mail, e-mail or facsimile, or upon mailing of the appeal, if it is sent by either certified or registered mail. Accordingly, it is suggested that all appeals be either personally filed or mailed by certified or registered mail.

REQUIRED ELEMENTS OF AN APPEAL

The contents of the notice of appeal are contained in 13 CCR § 568 to which the reader is referred for detailed information.

MOTION FOR INTERVENTION

Title 13 CCR § 551.13 permits any person, including a Board member, concerned with the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch or

representative to file a motion to intervene in a pending appeal.

AMICUS CURIAE BRIEFS

The Board, its Executive Director, or an ALJ may, in his or her discretion, allow the filing of amicus curiae briefs (13 CCR § 551.13).

ACTIONS BOARD MAY TAKE IN AN APPEAL RE: PENALTY

Vehicle Code section 3054 gives the Board the power to reverse or amend the decision of the Department for any of the following reasons:

(1) The Department has proceeded without or in excess of its jurisdiction.
(2) The Department has proceeded in a manner contrary to the law.
(3) The decision is not supported by the findings.
(4) The findings are not supported by the weight of the evidence in the light of the whole record reviewed in its entirety, including any and all relevant evidence adduced at any hearing of the Board.
(5) There is relevant evidence, which in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing.
(6) The determination or penalty, as provided in the decision of the Department is not commensurate with the findings.

The Board also has the power to amend, modify, or reverse the penalty imposed by the Department (Veh. Code § 3055). This power has been construed by the courts to include the ability to increase penalties set by the Department (*Toyota of Visalia* v. *Department of Motor Vehicles* (1984) 155 Cal.App.3d 315 [202 Cal.Rptr. 190], *appeal after remand*, (1987) 188 Cal.App.3d 872 [233 Cal.Rptr. 708].)

In all cases, the Board shall enter its order within 60 days after the appeal is filed unless there is unavoidable delay in receiving the administrative record. Should the Board issue an order reversing the decision of the Department, the Board may direct the Department to reconsider the matter and take further action (Veh. Code § 3056).

The Board's order must be in writing and becomes final on delivery or mailing of copies to the parties. There are no provisions for reconsideration or rehearing. The Board shall fix an effective date for its orders not more than 30 days from the day the order is served or remand the matter back to the Department for fixing an effective date (Veh. Code § 3057).

HEARING PROCEDURES

For procedural details for hearings on appeals, see 13 CCR § 580.

JUDICIAL REVIEW

APPEAL TO SUPERIOR COURT

Judicial review of final orders and decisions of the Board may be sought in Superior Court pursuant to Code of Civil Procedure section 1094.5 via a petition for writ of administrative mandamus. A petition for writ of administrative mandamus questions whether the Board proceeded without or in excess of jurisdiction, whether there was a fair hearing, and whether there was any prejudicial abuse of the Board's discretion. Parties seeking judicial review of a final order or decision should refer to Vehicle Code sections 3058, ~~and~~ 3068, *and 3082* and local rules of court.

APPENDIX

Form A - Protest
Form B1 - Petition (Veh. Code § 3050(c)(2))
Form B2 - Petition (Veh. Code § 3050(c)(1) or (c)(3))
Form C - Appeal

SAMPLE FORM A - PLEADING FORMAT OF PROTEST

The information contained in this sample form is intended to be informative and not advisory, limited in scope, and not intended to be a substitute for a careful reading of the specific statutes and/or regulations which may apply to your situation. For information on the format of filings and notices with the New Motor Vehicle Board, see 13 CCR § 593.1, et seq. **Sample forms can be obtained from the Board's website, www.nmvb.ca.gov.**

Identification of Attorney or Party Representing Self:

In the top left hand corner beginning with line one, place the name of the attorney (include state bar number) or individual representing him/herself, office address or residence address, telephone number, and e-mail address, if available. Single space this section. Skip one line then add which party is filing this document. In the case of a protest, the individual filing the protest is known as the "Protestant," whereas the individual responding would be the "Respondent."

1_____ [name of attorney and state bar number, or name of party representing self]
2_____ [address]
3_____ [telephone number, fax number and e-mail address, if available]
4_____ Attorney for [Protestant] or In pro per [if party representing him/herself]

Leave the upper right hand corner blank between lines 1 and 7 for the use of the Board.

Title of the Court:

On lines 8-9, place the title of the agency and the state in which the action is brought.

8 NEW MOTOR VEHICLE BOARD
9 STATE OF CALIFORNIA

Title of the Case:

Below the title of the court, flushed left, place the title of the case in the caption. The title of the case consists of the names of all of the parties.

Case Number:

The number of the case should be placed to the right of the title of the case or caption. Parties may leave the actual number blank until the Board has assigned the case a number.

Nature of Filing and Name of Action:

Below the number of the case, place the type of action filed along with the particular code section pursuant to which the action is filed.

Footer:

Except for exhibits, each paper filed with the Board must bear a footer in the bottom margin of each page, placed below the page number and divided from the rest of the document page by a printed line. The footer must contain the title of the paper or some clear and concise abbreviation in at least 10-point font.

In the Matter of the Protest of	)	
	)	
NAME OF FRANCHISEE,	)	Protest No. PR-
	)	
Protestant,	)	PROTEST
	)	
v.	)	[Vehicle Code section 3060, 3062,
	)	3064, 3065, 3065.1, 3070, 3072,
NAME OF FRANCHISOR,	)	3074, 3075, and 3076]
	)	[Dates of the hearing and any future
Respondent.	)	pre-hearing or settlement
	)	conferences, if known]

Introduction:

State the name of the party filing the document, the type of document filed (e.g., protest, response, motion) and the applicable statutory authority.

Protestant, [NAME OF PARTY/DEALERSHIP NAME], files this protest under the provisions of the California Vehicle Code section [applicable code section] with reference to the following facts:

Body:

Using numbered paragraphs, state the allegations in a clear and chronological order.

1. Protestant is a new motor vehicle dealer selling [type of new motor vehicle or recreational vehicle], and is located at [address]. Protestant's telephone number is [telephone number].

2. Respondent distributes/manufacturers [type/model of product] and is the franchisor of Protestant.

3. Protestant is represented in this matter by [attorney/law firm], whose address and telephone number are [address and telephone number].

4. On or about [date of occurrence(s)], Protestant received from Respondent a notice that Respondent intends to [terminate/modify/relocate/establish] its existing franchise agreement effective [number of days] from Protestant's receipt of said notice. A copy of said letter is attached as Exhibit A.

5. Protestant generally denies each and every allegation contained in the written notice of [termination/modification/relocation/establishment].

6. Respondent does not have good cause to [terminate/modify/relocate/establish] the franchise by reason of the following facts:

   (a) [Specific facts upon which Protestant bases the allegations].

7. Protestant and its attorneys of record desire to appear before the Board. The estimated length of hearing on this matter will take [number of days] to complete.

8. A Pre-Hearing Conference is requested.

Dated: Signed:

SAMPLE FORM B1 - PLEADING FORMAT OF PETITION (Veh. Code § 3050(c)(2))

The information contained in this sample form is intended to be informative and not advisory, limited in scope, and not intended to be a substitute for a careful reading of the specific statutes and/or regulations which may apply to your situation. For information on the format of filings and notices with the New Motor Vehicle Board, see 13 CCR § 593.1, et seq. **Sample forms can be obtained from the Board's website, www.nmvb.ca.gov.**

Identification of Attorney or Party Representing Self:

In the top left hand corner beginning with line one, place the name of the attorney (include state bar number) or individual representing him/herself, office address or residence address, telephone number, and e-mail address, if available. Single space this section. Skip one line then add which party is filing this document. In the case of a petition, the individual filing the petition is known as the "Petitioner," and the party responding would be the "Respondent."

1_____ [name of attorney and state bar number, or name of party representing self]
2_____ [address]
3_____ [telephone number, fax number and e-mail address, if available]
4_____ Attorney for [Petitioner] or In pro per [if party representing him/herself]

Leave the upper right hand corner blank between lines 1 and 7 for the use of the Board.

Title of the Court:

On lines 8-9, place the title of the agency and the state in which the action is brought.

8 NEW MOTOR VEHICLE BOARD
9 STATE OF CALIFORNIA

Title of the Case:

Below the title of the court, flushed left, place the title of the case in the caption. The title of the case consists of the names of all of the parties.

Case Number:

The number of the case should be placed to the right of the title of the case or caption. Parties may leave the actual number blank until the Board has assigned the case a number.

Nature of Filing and Name of Action:

Below the number of the case, place the type of action filed along with the particular code section pursuant to which the action is filed.

Footer:

Except for exhibits, each paper filed with the Board must bear a footer in the bottom margin of each page, placed below the page number and divided from the rest of the document page by a printed line. The footer must contain the title of the paper or some clear and concise abbreviation in at least 10-point font.

11	In the Matter of the Petition of	)	
		)	
12	NAME OF INDIVIDUAL,	)	Petition No. P-
		)	
13	Petitioner,	)	
		)	
14	v.	)	**PETITION**
		)	[Vehicle Code section 3050(c)(2)]
15	NAME OF LICENSEE,	)	
		)	[Dates of the hearing and any future
16	Respondent.	)	pre-hearing or settlement
		)	conferences, if known]

20 [NAME OF INDIVIDUAL], petitions the New Motor Vehicle Board, pursuant to Vehicle Code section 3050(c), with reference to the following facts:

1. Petitioner is, and at all times mentioned herein, an individual and consumer of a new motor vehicle or vehicles in the State of California.
2. Respondent is, and at all times mentioned herein, a licensee authorized to do business and doing business in the State of California.
3. Petitioner is represented in this matter by (name, address, and telephone number of law firm, or other representative).
4. Petitioner's mailing address and telephone number are as follows:
5. Respondent's mailing address and telephone number are as follows:
6. (Outline the particulars of the dispute).
7. WHEREFORE, Petitioner prays as follows: (A hearing and relief available under Vehicle Code section 3050(c)(2)).

Dated: Signed:

SAMPLE FORM B2 - PLEADING FORMAT OF PETITION (Veh. Code § 3050(c)(1) or (3))

The information contained in this sample form is intended to be informative and not advisory, limited in scope, and not intended to be a substitute for a careful reading of the specific statutes and/or regulations which may apply to your situation. For information on the format of filings and notices with the New Motor Vehicle Board, see 13 CCR § 593.1, et seq. **Sample forms can be obtained from the Board's website, www.nmvb.ca.gov.**

Identification of Attorney or Party Representing Self:

In the top left hand corner beginning with line one, place the name of the attorney (include state bar number) or individual representing him/herself, office address or residence address, telephone number, and e-mail address, if available. Single space this section. Skip one line then add which party is filing this document. In the case of a petition, the individual filing the petition is known as the "Petitioner," and the party responding would be the "Respondent."

1_____ [name of attorney and state bar number, or name of party representing self]
2_____ [address]
3_____ [telephone number, fax number and e-mail address, if available]
4_____ Attorney for [Petitioner] or In pro per [if party representing him/herself]

Leave the upper right hand corner blank between lines 1 and 7 for the use of the Board.

Title of the Court:

On lines 8-9, place the title of the agency and the state in which the action is brought.

8 NEW MOTOR VEHICLE BOARD
9 STATE OF CALIFORNIA

Title of the Case:

Below the title of the court, flushed left, place the title of the case in the caption. The title of the case consists of the names of all of the parties.

Case Number:

The number of the case should be placed to the right of the title of the case or caption. Parties may leave the actual number blank until the Board has assigned the case a number.

Nature of Filing and Name of Action:

Below the number of the case, place the type of action filed along with the particular code section pursuant to which the action is filed.

Footer:

Except for exhibits, each paper filed with the Board must bear a footer in the bottom margin of each page, placed below the page number and divided from the rest of the document page by a printed line. The footer must contain the title of the paper or some clear and concise abbreviation in at least 10-point font.

In the Matter of the Petition of	)	
	)	
NAME OF INDIVIDUAL/LICENSEE,	)	Petition No. P-
	)	
Petitioner,	)	
	)	
v.	)	**PETITION**
	)	[Vehicle Code section 3050(c)(1)]
NAME OF INDIVIDUAL/LICENSEE,	)	[Vehicle Code section 3050(c)(3)]
	)	
Respondent.	)	
	)	

[NAME OF INDIVIDUAL/LICENSEE], petitions the New Motor Vehicle Board, pursuant to Vehicle Code section 3050(c), with reference to the following facts:

1. Petitioner is, and at all times mentioned herein, a licensee of the Department of Motor Vehicles authorized to do business and doing business in the State of California or is an individual and consumer of a new motor vehicle or vehicles in the State of California.
2. Respondent is, and at all times mentioned herein, a licensee of the Department of Motor Vehicles authorized to do business and doing business in the State of California.
3. Petitioner is represented in this matter by (name, address, and telephone number of law firm).
4. Petitioner's mailing address and telephone number are as follows:
5. Respondent's mailing address and telephone number are as follows:
6. (Outline the particulars of the dispute).
7. WHEREFORE, Petitioner prays as follows: (That the Board provide relief available under Vehicle Code section 3050(c)(1) or 3050(c)(3).)

Dated: Signed:

SAMPLE FORM C - PLEADING FORMAT OF AN APPEAL

The information contained in this sample form is intended to be informative and not advisory, limited in scope, and not intended to be a substitute for a careful reading of the specific statutes and/or regulations which may apply to your situation. For information on the format of filings and notices with the New Motor Vehicle Board, see 13 CCR § 593.1, et seq. **Sample forms can be obtained from the Board's website, www.nmvb.ca.gov.**

Identification of Attorney or Party Representing Self:

In the top left hand corner beginning with line one, place the name of the attorney (include state bar number) or individual representing him/herself, office address or residence address, telephone number, and e-mail address, if available. Single-space this section. Skip one line then add which party is filing this document. In the case of an appeal, the individual filing the appeal would be the "Appellant."

1_____ [name of attorney and state bar number, or name of party representing self]
2_____ [address]
3 _____ [telephone number, fax number and e-mail address, if available]
4_____ Attorney for [Appellant] or In pro per [if party representing him/herself]

Leave the upper right hand corner blank between lines 1 and 7 for the use of the Board.

Title of the Court:

On lines 8-9, place the title of the agency and the state in which the action is brought.

8 NEW MOTOR VEHICLE BOARD
9 STATE OF CALIFORNIA

Title of the Case:

Below the title of the court, flushed left, place the title of the case in the caption. The title of the case consists of the names of all of the parties.

Case Number:

The number of the case should be placed to the right of the title of the case or caption. Parties may leave the actual number blank until the Board has assigned the case a number.

Nature of Filing and Name of Action:

Below the number of the case, place the type of action filed along with the particular code section pursuant to which the action is filed.

Footer:

Except for exhibits, each paper filed with the Board must bear a footer in the bottom margin of each page, placed below the page number and divided from the rest of the document page by a printed line. The footer must contain the title of the paper or some clear and concise abbreviation in at least 10-point font.

In the Matter of the Appeal of	)	
	)	Appeal No. A-
NAME OF APPLICANT FOR OR LICENSEE,	)	
	)	**NOTICE OF APPEAL**
Appellant,	)	[Vehicle Code section 3052]
	)	
v.	)	
	)	
DEPARTMENT OF MOTOR VEHICLES,	)	
	)	[Dates of the hearing and any future
Respondent.	)	pre-hearing or settlement
	)	conferences, if known]

Body:
Using numbered paragraphs, state the allegations in a clear and chronological order.

TO THE DIRECTOR OF THE DEPARTMENT OF MOTOR VEHICLES:

PLEASE TAKE NOTICE that [name of party] herein appeals from the Decision of the Director filed [date] pursuant to [applicable Vehicle Code section].

This Appeal is based on the following grounds:

1. The Department has proceeded without or in excess of its jurisdiction;
2. The Department has proceeded in a manner contrary to the law;
3. The determination of penalty, as provided in the Decision of the Department, is not commensurate with the findings.

This appeal is further based on the pleadings and papers, exhibits, transcripts and related documents included in the record herewith, together with such other evidence, oral or documentary, as may be introduced at the hearing of this Appeal.

Appellant hereby requests an appearance before the above-entitled Board to present oral argument herewith, pursuant to the provisions of Vehicle Code section 3053.

Appellant is an [applicant for or licensee] within the purview of Vehicle Code, Division 5, Chapter 4, section 11700, et seq.

Dated: Signed: